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12 SUPERIOR COURT OF STATE OF ARIZONA
13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,
15 Plaintiff,
16 vs.
17 JAMES ARTHUR RAY,
18 Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
MOTION FOR MISTRIAL BASED ON
IMPROPER CLOSING ARGUMENT**

19 Defendant James Arthur Ray, by and through undersigned counsel, hereby moves for a
20 mistrial and dismissal with prejudice based on the intentionally improper closing argument of the
21 prosecutor. This motion is supported by the following Memorandum of Points and Authorities.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The prosecutor's improper statements in closing argument warrant a mistrial at this time. The Defense has already made a record regarding the State's misconduct in its initial closing argument, and incorporates those arguments herein. The additional misconduct in *rebuttal* closing argument spans six areas: (1) incorrect statements of fact and inferences not supported by the record; (2) incorrect statements of the law; (3) violation of Rule 404 and this Court's related rulings; (4) improper vouching; (5) improper appeals to the prejudice of jurors; and (6) improper commentary on Mr. Ray's decision not to testify. Examples of each category—not an exhaustive list—are set out below. Because the prosecutor's misconduct was knowing, the case should be dismissed with prejudice. *Pool v. Superior Court*, 139 Ariz. 98 (1984).

II. ARGUMENT

A. Incorrect Statements Of Fact And Inferences Not Supported By The Record

Several statements by the prosecutor run afoul of the boundaries set forth in *State v. Bible*, 175 Ariz. 549, 602 (Ariz. 1993), because they are not supported by the record. These include:

- Misstatement: “Dr. Paul, the doctor hired by the defense, testified he was not saying that the victims did not die from heat stroke but that he cannot rule out organo-phosphates because there was no testing.” Draft Trial Transcript, 6/21/11, at 4:2–5.
 - Evidence: Dr. Paul's opinion, stated in his report and in his testimony, is that the decedents did not die from heat stroke.
- Misstatement: Dawn Sy testified that the soil samples were adequately representative of the scene.
 - Evidence: Dawn Sy testified that she *did not know* if the samples were representative of the whole sweat lodge, and that she *could not know* that fact without conducting testing. See Draft Trial Transcript, 6/7/11, at 234:5–18.
- Misstatement: Blood samples were “equally available” to both sides for testing.

1 ○ Evidence: The County Attorney has justified this line of argument based on
2 the principle that “the nonproduction of evidence may give rise to the
3 inference that it would have been adverse to the party who could have
4 produced it.” *State ex rel. McDougall v. Corcoran*, 153 Ariz. 157, 160
5 (1987). The testimony in this case is that Mr. Ray was not indicted until
6 February 2010, four months after the accident occurred, and that testing
7 after that lapse of time would not have been meaningful. Furthermore, Dr.
8 Mosley testified on May 6 that because the samples were frozen, testing
9 would have been problematic or unreliable. *See also* Exhibit 1001, Letter
10 from Bill Hughes to Luis Li, 3/2/11 (“Blum [a doctor employed by the
11 laboratory] also indicated that the results of the test could be affected by
12 the way the blood samples were stored (frozen or refrigerated)”). Based on
13 this evidence, there is no fair inference, based on Mr. Ray’s alleged failure
14 to test the samples, that the results would have been adverse to Mr. Ray.
15 Instead, the State’s manner of preserving the samples of the timing of its
16 decision to indict Mr. Ray *deprived* Mr. Ray of an opportunity to conduct
17 meaningful testing.

18 • Misstatement: “Mr. Ray told Detective Barbaro that ‘Ted, the fire tender did it.’”

19 ○ Evidence: As an initial matter, Detective Barbaro agreed that a
20 misunderstanding was possible, and agreed that Mr. Ray had stated that he
21 (Mr. Ray) had hosted the lodge for years. In any event, even by Barbaro’s
22 own account, Mr. Ray never said that Ted “did it.” The alleged statement
23 by Mr. Ray was one word—“Ted”—in response to a question about who
24 conducted the lodge.

25 **B. Incorrect Statements Of The Law**

26 • Misstatement: Mr. Ray is guilty of reckless manslaughter because he “intended”
27 everything that occurred other than death. Mr. Ray “intentionally used heat to
28 create an altered state.”

○ The law: As an initial matter, “intent” is a legal term of art that pertains to the result at issue in the crime—in this case, death. The State’s use of the term here is improper and likely to confuse the jury. In addition, the State’s argument misstates the facts: there is no evidence that Mr. Ray intended “everything that occurred.” Finally, to the extent there is evidence that Mr. Ray “intended” to create an *altered state*—a term used in this case to encompass meditation and love—that is patently not sufficient to constitute the *mens rea* of recklessness, which requires awareness and conscious disregard of the substantial and unjustifiable risk that one’s conduct will cause *death*.

- Misstatement: Mr. Ray is guilty of reckless manslaughter because three people would not have died if Mr. Ray had acted reasonably. If Mr. Ray had acted like a reasonable person, “we would not be here.”

- The law: The State's extended argument that "we would not be here" had Mr. Ray acted reasonably blurs the line between civil and criminal conduct and raises the risk that the jury could convict Mr. Ray if it concluded that Mr. Ray merely acted unreasonably. The crimes of reckless manslaughter, and negligent homicide both require much more: an awareness and conscious disregard (or failure to perceive, for negligent homicide) of a substantial and unjustifiable risk of death, where the conscious disregard (or failure to perceive) is a gross deviation from reasonable conduct.

C. Violation Of Rule 404 And This Court's Related Rulings

The State argued that alleged incidents at the 2007 and 2008 sweat lodges are evidence that Mr. Ray's reckless conduct caused the 2009 deaths. As the Defense has argued in prior motions, the State's arguments rest on improper propensity inferences and violate Rule 404. Moreover, the State's rebuttal closing argument misstated the facts by stating that the dirt and coverings were "the same" in the October 2009 ceremony as in previous ceremonies.

1 The State compounded the Rule 404 error in its rebuttal closing argument by suggesting
2 that testimony from other sweat lodges establishes a standard of care: that Mr. Ray's conduct was
3 "extreme in comparison to the careful behavior of other facilitators," that "others do four rounds,
4 use far fewer rocks," and "gently ladle the water on the hot rocks." The Court acknowledged at
5 sidebar that "the suggestion some how there is some other standard out there of how to properly
6 conduct a sweat lodge" is "a dangerous area for the whole case." Draft Trial Transcript, 6/21/11,
7 at 58:17-59:8.

8 **D. Improper Vouching**

9 The State improperly vouched at least twice during closing argument:

- 10 • "First, I never thought I would find myself having to defend the fact that I'm a
11 working county attorney. So I'm just going to leave that one alone."
12 • "Second, I want to talk about this meeting in December of 2009 at the county
13 attorney's office with the medical examiners. Mr. Li made several references to
14 this so called secret meeting. What you learned at trial is that there was a charging
15 meeting at the county attorney's office and that such meetings are not unusual as
16 the prosecutors and the detectives review cases. *Our belief* that the defense
17 attorneys were not entitled to the details—" Draft Trial Transcript, 6/21/11, at
18 60:17-61:5.

19 These statements are impermissible attempts by the State to "place the prestige of the
20 government behind [its] case." *State v. Leon*, 190 Ariz. 159, 162 (1997). They also
21 amount to testimony by the County Attorney about matters not in evidence. Both forms
22 of misconduct are grounds for mistrial.

23 **E. Improper Appeals to Jurors' Prejudice**

24 The County Attorney argued at length, while projecting the photos of the decedents, that
25 this case is "unbearably sad," and that "these three people looking to improve their lives trusted
26 that for \$10,000 Mr. Ray knew what he was doing and they trusted that for \$10,000 Mr. Ray
27 would . . . keep them safe." Draft Trial Transcript, 6/21/11, at 81:23-24, 89:25-90:5. These
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1 statements do not bear on the elements of the crime. They serve no purpose but to impermissibly
2 inflame the jurors' passions and prejudices.

3 **F. Improper Commentary On Mr. Ray's Decision Not To Testify**

4 Ms. Polk stated that "[i]n determining the credibility of witnesses, you are not to look at
5 the rights the religious beliefs and the spiritual beliefs of witnesses, *including Mr. Ray*. What
6 you're supposed to look at in determining credibility is found on page 2 of your jury
7 instructions." This statement, lumping Mr. Ray in with trial witnesses, recklessly disregards the
8 constitutional prohibition on comments by the prosecutor on Mr. Ray's decision not to testify.

9 **III. CONCLUSION**

10 The prosecutor's repeated, knowing misconduct in rebuttal closing argument, in
11 conjunction with the litany of improper and prejudicial statements made in the State's initial
12 closing argument, warrant mistrial at this time. Because the State has recklessly disregarded the
13 risk of mistrial or reversal, dismissal must be with prejudice.

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15 DATED: June 22, 2011

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20 By: 

21 Attorneys for Defendant James Arthur Ray

22 Copy of the foregoing delivered this 22 day
23 of June, 2011, to:

24 Sheila Polk
25 Yavapai County Attorney
26 Prescott, Arizona 86301

27 by 

<p>1 2 good morning 3 THE COURT /-S record will show the presence 4 of Mr. Ray Mr. Do /PH-S /KEL I will Mr. Li 5 Ms. Polk and Mr. Hughes The jury is present 6 Good morning Ms. Polk 7 MS. POLK Thank you, Your Honor Good 8 morning 9 Heat stroke the No. 1 criteria in 10 diagnosing heat stroke is to examine whether the 11 patient was in a heated environment Audio 12 played) 13 Heat stroke, first you start sweating 14 profusely Then your blood pressure falls and if 15 not removed from the heat you begin to experience 16 an altered mental state (Audio played) If not 17 removed from the heat you will slip out of cop 18 /SHUS /TPHERBGS the hallmark of heat stroke And 19 slipping out of consciousness, /A /KORDZ /-G to 20 both Dr. Dickson and Dr. Paul, rapidly leads to 21 brain damage cardiac arrest and death if not 22 removed from the heat It is imperative to remove 23 a person from the heat immediately To recognize 24 the altered mental status that is the hallmark of 25 heat stroke prep audio played) To prepared for a</p>	<p>3 1 the doctors /A greet on that points You heard a 2 lot of medical testimony but it boils down to this 3 Dr. Lyon who performed the autopsy on Kirby and 4 James stayed with his conclusion that they died of 5 heat stroke and his opinion has not changed 6 Dr. Mosley who performed the autopsy on Liz Neuman 7 testified she died of prolonged exposure to the 8 heat And his opinion has not changed 9 Dr. Cutshall, Dr. Lyon also testified that he 10 performed the autopsy object James Shore and that 11 his cause of death was heat stroke and his opinion 12 did not change Dr. Cutshall, the doctor from 13 Flagstaff who treated Liz Neuman testified that he 14 concluded Liz died of heat stroke among other 15 causes and his opinion has not changed That's Liz 16 Neuman's medical record Cause of death acute 17 renal failure, ^ No <Sticky Space>2 ^ number 2 18 anoxic brain injury and ^ Number 19 3 ^ No <Sticky Space>3 DIC secondary to heat 20 stroke His opinion did not change Dr. Dickson, 21 the doctor that the state hired to look at the 22 medical records and autopsy report for the three 23 victims and to look at all the medical records for 24 all 18 ^ patients concluded that Kirby 25 Liz and James all died of heat stroke or as a</p>
<p>2 1 heat events such as a sweat lodge one should eat 2 sleep well Be high trait /-D lookout for one 3 another because a person suffering from heat stroke 4 will not recognize the need to get out of the heat 5 /TAOU to their altered state As Dr. Dickson told 6 you on May 10 when he testified, if you're 7 unconscious you're not going to do as well as 8 somebody that's just acting a little /TKPWOF I I 9 mean generally the people that have gotten all the 10 way to unconscious and then if they don't wake up 11 quickly so somebody is -- one of the things we 12 teach is to treat these ^ patients, get 13 them cool very quickly The people that have gone 14 to heat stroke The longer you wait to cool them 15 down the much worse they're going to do If you 16 wait more than an hour or two, their chance of 17 death goes way up So the sooner you cool them, 18 the better they're going to do So people that are 19 unconscious, definitely do worse But if you can 20 get to them /HAERL and you can cool them off and 21 they wake up it's a great sign There is no 22 question ladies and gentlemen, no reasonable doubt 23 that Kirby Brown Ms. Neuman and James Shore all 24 died of heat stroke or exposure to the extreme heat 25 that Mr. Ray created in that tent All but one of</p>	<p>4 1 result of the heat is and his opinion did not 2 change Dr. Paul, the doctor hired by the defense 3 testified he was not saying that the victims did 4 not die from heat stroke but that he cannot rule 5 out organo-phosphates because there was no testing 6 Dr. Paul conceded that he would have to conclude 7 that Kirby James and Liz died of heat stroke if he 8 had documented temperatures of hundred four, 9 hundred five or above So where does that leave 10 you, the fact finders, who must find beyond a 11 reasonable doubt that Mr. Ray's conduct can caused 12 the deaths of the three victims Five doctors 13 testified in this case, four of the five say the 14 victims died as /AE result of exposure to Mr. Ray's 15 heat event, the sweat lodge and the last doctor, 16 Dr. Paul, the one hired by the defense says he's 17 not ruling out heat stroke, and would agree it's 18 heat stroke if he had the documented core 19 temperature of hundred five degrees furnish height 20 MR. LI I'm going to object it misstates the 21 testimony 22 THE COURT Ladies and gentlemen you must rely 23 on your own recollection as to the testimony in 24 this case the evidence in this case 25 MS. POLK In other words if Dr. Paul had</p>

<p>5</p> <p>1 proof that the temperature of the victim was</p> <p>2 hundred five then all the doctors would be in</p> <p>3 agreements that the victims died of heat stroke</p> <p>4 Let's take a look at the issue of temperature</p> <p>5 There is clearly evidence that the temperature of</p> <p>6 all three victims was at least hundred five degrees</p> <p>7 before they /KO*LD cooled down All the doctors</p> <p>8 testified that heat stroke occurs when the bodies</p> <p>9 temperature nse /-Z to hundred four, hundred five</p> <p>10 degrees or above They further testified that to</p> <p>11 diagnose heat stroke a documented core temperature</p> <p>12 is useful but not required In fact most often</p> <p>13 the medical examiners will not have that documented</p> <p>14 core temperature because rest cures have done</p> <p>15 everything possible to save that persons life by</p> <p>16 lowening the ^ patence ^ patients temperature as</p> <p>17 rapidly as possible or sometimes you won't have</p> <p>18 that core temperature because as in the case of</p> <p>19 border cross /ERZ, where you have only /SKEL at the</p> <p>20 /TPHAQEUZ /-D remains you don't have the ability to</p> <p>21 get that core temperature So the elevated core</p> <p>22 temperature is a diagnostic critena but it does</p> <p>23 not have to be documented in the medical records</p> <p>24 and oftentimes it is not Most often doctors and</p> <p>25 medical examiners look to the circumstances to</p>	<p>7</p> <p>1 evidence of the core temperature of the three</p> <p>2 victims, but just as Dr Paul testified, he has</p> <p>3 never had documented evidence of the core</p> <p>4 temperature of all the autopsies of border cross</p> <p>5 /ERZ that he did and just as medical examiners and</p> <p>6 doctors frequently will not have, because the first</p> <p>7 priority is to save lives by cooling the patient,</p> <p>8 not by trying to get that rectal temperature This</p> <p>9 is where the law says you can look to the</p> <p>10 circumstances to decide a fact You are not</p> <p>11 limited to direct evidence</p> <p>12 On page 3 of your jury instruction you</p> <p>13 have an instruction that talks about direct and</p> <p>14 circumstantial evidence This instruction says</p> <p>15 that the law makes no distinction between direct</p> <p>16 and circumstantial evidence I'm going to read the</p> <p>17 instruction It says evidence may be direct or</p> <p>18 circumstantial Direct evidence is the testimony</p> <p>19 of a witness who saw, heard or otherwise observed</p> <p>20 an event Circumstantial evidence is the proof of</p> <p>21 a /TPABGTD or facts from which you may find another</p> <p>22 fact The law makes no distinction between direct</p> <p>23 and circumstantial evidence It is for you to</p> <p>24 determine the importance to be given the evidence</p> <p>25 regardless of whether it is direct or</p>
<p>6</p> <p>1 determine whether that core temperature was</p> <p>2 elevated When Dr Paul testified, he agreed that</p> <p>3 you don't have to have a documented core</p> <p>4 temperature to have heat stroke and that you look</p> <p>5 to the surrounding circumstances to conclude that</p> <p>6 the patient had that requisite core temperature of</p> <p>7 hundred four or hundred five and above Now</p> <p>8 Mr Li in his opening had drawn up on the easel</p> <p>9 these two things elevated temperature and</p> <p>10 dehydration We agree that you have to have that</p> <p>11 elevated temperature to have heat stroke That</p> <p>12 elevated temperature does not have to be documented</p> <p>13 in the records because more often than not you're</p> <p>14 not going to get that core temperature of a victim</p> <p>15 of heat stroke because of rescue efforts to bring</p> <p>16 the temperature down</p> <p>17 In fact Dr Paul told you, he has done 10</p> <p>18 to 12 autopsies where he diagnosed heat stroke, all</p> <p>19 but one were border cross /ERZ and he never ever</p> <p>20 had that documented core temperature for heat</p> <p>21 stroke in this case leak Dr Paul's cases, we do</p> <p>22 not have a documented core temperature, but we do</p> <p>23 have circumstantial evidence that the three victims</p> <p>24 clearly suffered high core temperatures as high as</p> <p>25 hundred five or above We do not have direct</p>	<p>8</p> <p>1 circumstantial In other words, from all the</p> <p>2 surrounding facts in this case you can finds by</p> <p>3 circle evidence that the victims had that core</p> <p>4 temperature necessary for heat stroke I just want</p> <p>5 to give you a quick example of what direct evidence</p> <p>6 is versus /SERBG /AL evidence Here in this</p> <p>7 courtroom, if we had a window looking outside and</p> <p>8 it started to rain, we could all see that it was</p> <p>9 raining That would be direct evidence But here</p> <p>10 in this courtroom where we do not have a window</p> <p>11 looking outside, if all of a sudden we heard</p> <p>12 thunder and the door opened and a woman came in</p> <p>13 with a rain coat dripping with water, and with an</p> <p>14 umbrella that was dripping with water and she shook</p> <p>15 it off that would be circumstantial evidence that</p> <p>16 it was raining outside You wouldn't see the rain,</p> <p>17 but you would have circumstantial evidence that it</p> <p>18 was in fact ^ raining ^ range outside And the law</p> <p>19 makes no distinction between /SERBG /AL and direct</p> <p>20 evidence Let's examine the fact here to determine</p> <p>21 whether a support for the conclusion by four of the</p> <p>22 five doctors in this case that the three victims</p> <p>23 died of heat exposure or heat stroke Several</p> <p>24 doctors testified how your body will cool nicely</p> <p>25 within an hour when removed from the /HAEFPLT</p>

<p>9</p> <p>1 Dr. Dickson explained that the body works really</p> <p>2 hard to maintain a temperature of '98 six And</p> <p>3 that when participants came out of that super</p> <p>4 heats /-D tent into an ambient air temperature of</p> <p>5 about 70 degrees that the air temperature alone</p> <p>6 would be a significant factor in cooling them down</p> <p>7 Dr. Paul testified that a body will cool about 11</p> <p>8 degrees per hour with aggressive cooling such as</p> <p>9 ice baths but he would not allow to be pinned do</p> <p>10 you understand by Mr. Hughes about how fast one</p> <p>11 would cool with taken out of Mr. Ray's hot tent</p> <p>12 and into the air that was at least 25 degrees</p> <p>13 cooler, seven degrees 25 degrees cooler than the</p> <p>14 temperature of your bodies trying to get to</p> <p>15 98 sex Now for Kirby Brown and James Shore, you</p> <p>16 know that there are no recorded temperatures The</p> <p>17 EMT's however testified that they found James Shore</p> <p>18 and Kirby Brown with their close removed, and the</p> <p>19 EMT's could not remember if the ground around Kirby</p> <p>20 and James was wet Detective Diskin testified that</p> <p>21 the area on /-TSD outside of the tent had been</p> <p>22 worked opt was muddy the next day when he was on</p> <p>23 scene For Liz, there was a recorded temperature</p> <p>24 from her armpit of '97 five at six 25, which is</p> <p>25 more than an hour after 9-1-1 was called And</p>	<p>11</p> <p>1 you can see that Liz easily could have cooled down</p> <p>2 six degrees from hundred five to 99 five in that</p> <p>3 hour The defendants tried to cast doubt that list</p> <p>4 was hot when she came out of the tent by arguing to</p> <p>5 you that doctor Nell Wagoner, the gynecologist from</p> <p>6 /HRAZ /HRAZ had /TEFPD that she touched Liz</p> <p>7 immediately nght after she emerged from the sweat</p> <p>8 lodge and that she was cold You have a jury</p> <p>9 instructions on page 3 that says lawyers comments</p> <p>10 are not evidence And it says in the opening</p> <p>11 statements and closing argument the lawyers talked</p> <p>12 to you about the law and the /EFT evidence /-FPT</p> <p>13 what the lawyers say is not evidence but it may</p> <p>14 help you to understand the law and the evidence</p> <p>15 It is simply not what the witness Dr. Wagoner</p> <p>16 testified to She did not testify that she</p> <p>17 immediately went to Liz, and touched her and that</p> <p>18 she was cold Here's what Dr. Wagoner testified</p> <p>19 to She testified that when this heat event was</p> <p>20 over, she saw four people unconscious in the tent</p> <p>21 She told you that she tried to drag a woman out but</p> <p>22 could not And she told you that she then assisted</p> <p>23 in dragging another woman out, who was also</p> <p>24 unconscious, and pulled that woman straight out the</p> <p>25 entrance and left her there By the way, remember</p>
<p>10</p> <p>1 Dr. Paul, the defense doctor testified that a</p> <p>2 possession of methamphetamine tour taken from</p> <p>3 understand the arm is not a /RAE lay able gauge of</p> <p>4 a persons core temperature and that it will be</p> <p>5 about two degrees lower than a persons core</p> <p>6 temperature Dr. Paul agreed that working off of</p> <p>7 that armpit temperature Liz's core temperature was</p> <p>8 at least '99 /TPAOEUFR at six 25, more than an hour</p> <p>9 after 9-1-1 had been called More than an hour</p> <p>10 after she had been removed from the hot tent</p> <p>11 MR. LI Again mess states the testimony</p> <p>12 THE COURT Ladies and gentlemen, you've been</p> <p>13 told several times of course what the lawyers say</p> <p>14 is not evidence You have to determine what the</p> <p>15 evidence what the testimony has been Ms. Polk</p> <p>16 you may continue</p> <p>17 MS. POLK Thank you Your Honor Dr. Paul</p> <p>18 also agreed if Liz had been /WETS /-D down and her</p> <p>19 arm at this time was pit the temperature would not</p> <p>20 be reliable at all Finally again that temperature</p> <p>21 understand Liz's armpit was taken more than an hour</p> <p>22 after 9-1-1 it was called Using doctor detective</p> <p>23 sons opinion that a body will cool down nicely when</p> <p>24 the air temperature is 70 degrees and with a</p> <p>25 breeze will cool as much as 11 degrees in an hour,</p>	<p>12</p> <p>1 how Dr. Wagoner testified at her /KHOBG how much</p> <p>2 hotter the back part of that sweat lodge was as she</p> <p>3 /SERBG /-LD and tried to pull people out</p> <p>4 Dr. Wagoner testified that is ^ ones ^ once she was</p> <p>5 outside she put the unconscious woman down and</p> <p>6 turned to the Dream Team members and said there are</p> <p>7 people unconscious, they can't get out, and they</p> <p>8 need help Dr. Wagoner, described for you, how hot</p> <p>9 and weak she felt /SH"E how she laid down in the</p> <p>10 field about 20 feet from the tent and that someone</p> <p>11 poured water on her from a container, Dr. Wagoner</p> <p>12 told you that with the cooler air temperature and</p> <p>13 that water she, Dr. Wagoner cooled down quickly and</p> <p>14 began to feel chilly Dr. Wagoner testified that</p> <p>15 at some point she tried to get up and someone told</p> <p>16 her to stay down and not to get up yet She told</p> <p>17 you that somebody else brought her electrolytes to</p> <p>18 drink and then Dr. Wagoner told you then when she</p> <p>19 was finally ready to get up, someone told her to go</p> <p>20 to her room but at that point she looked around and</p> <p>21 saw people in distress That's when doctor /VAL</p> <p>22 /TPHER testified she law Liz lying there close to</p> <p>23 the tent with no one tending to her Dr. Wagoner</p> <p>24 told you Liz was breathing, but would not respond</p> <p>25 And finally Dr. Wagoner told you that when she</p>

<p>13</p> <p>1 touched Liz her skin was cold. Dr. Wagoner told you</p> <p>2 that Liz had been hosed down and Dr. Wagoner told</p> <p>3 you that she was with Liz, she thinks for about 30</p> <p>4 minutes before the paramedics arrived. Now the</p> <p>5 defense showed you some photographs from 2008 and</p> <p>6 pointed to these people and said that they do not</p> <p>7 look cold. Suggesting that if in 2008 participants</p> <p>8 didn't look cold that in 2009 perhaps they were</p> <p>9 already cool. Think about this, Mr. Ray's event</p> <p>10 in 2008 was held in September, a full month earlier</p> <p>11 than the event in 2009, which was held in October.</p> <p>12 And there is a significant air temperature</p> <p>13 difference from September to October. The other</p> <p>14 thing about these photographs is look at how much</p> <p>15 water is on the ground. Me Li Melinda</p> <p>16 ^ March ^ march minute and Jennifer hill!</p> <p>17 testified about how the Mercers were cooling off</p> <p>18 everyone who came out of the sweat lodge in 2009 as</p> <p>19 fast as they could with the houses and buckets of</p> <p>20 water. Finally, on this issue of the core</p> <p>21 temperature of the three victims Dr. Dickson, who</p> <p>22 looked at all the records, of all the</p> <p>23 ^ patience ^ patients and all the records of the</p> <p>24 three victims, testified that all three</p> <p>25 ^ patience ^ patients had suffered from heat stroke</p>	<p>15</p> <p>1 ^ patience ^ patients had suffered from</p> <p>2 dehydration. First it's not clear that all three</p> <p>3 were not dehydration when they came out of the</p> <p>4 sweat lodge. You heard a lot of testimony from the</p> <p>5 doctors that ^ patience ^ patients could have been</p> <p>6 /RE high /TKRAEUTS /-D by aggressive /RE hydration</p> <p>7 efforts of the emergency responders and Liz</p> <p>8 Neuman's medical records say she was treated for</p> <p>9 dehydration. Second it doesn't matter. It doesn't</p> <p>10 matter because dehydration is not a required</p> <p>11 diagnostic criteria for heat stroke. Either</p> <p>12 classic heat stroke or nonexertional heat stroke,</p> <p>13 as all the doctors told you dehydration is useful</p> <p>14 information in diagnose diagnosing heat stroke but</p> <p>15 it is not a required criteria. Only Dr. Paul, the</p> <p>16 defense doctor makes the distinction between</p> <p>17 exertional and nonexertional heat stroke /STKP only</p> <p>18 Dr. Paul says you do not have to have dehydration</p> <p>19 or heat stroke, but you do have to have dehydration</p> <p>20 for none /ERG exertional heat stroke. That</p> <p>21 position ladies and gentlemen is not supported by</p> <p>22 Dr. Paul's own organization as you saw. The</p> <p>23 national association of medical examiners</p> <p>24 Dr. Paul's professional organization. That</p> <p>25 position is not supported as you saw by any of</p>
<p>14</p> <p>1 or died as a result of the heat. So to summarize</p> <p>2 this issue of temperature. You have four out of</p> <p>3 five doctors /SAEG death is due to the heat.</p> <p>4 Looking at the circumstantial evidence, you heard</p> <p>5 and saw from 2008 photographs, how much water was</p> <p>6 sprayed in the area and how aggressively the</p> <p>7 efforts were to cool down people. You heard</p> <p>8 Mr. Ray's own words that as they come out of the</p> <p>9 sweat lodge they will be sprayed with water. You</p> <p>10 heard testimony from Dr. Dickson who said the area</p> <p>11 around Kirby and James was still muddy the next</p> <p>12 day. You heard Dr. Dickson testified when you come</p> <p>13 out of a heated environment to an ambient</p> <p>14 temperature of 70 degrees, 25 did he /TKPWRES</p> <p>15 cooler than the temperature that your body wants to</p> <p>16 get too, your body on its own will start cooling.</p> <p>17 And the first recorded temperature we have for Liz</p> <p>18 is more than an hour after the 9-1-1 call was made.</p> <p>19 You have the fifth Doctor, Dr. Paul, who has</p> <p>20 admitted in the 10 to 12 autopsies that he has done</p> <p>21 where he diagnosed heat stroke he never had a</p> <p>22 documented core temperature. The second area where</p> <p>23 Dr. Paul had difficulty a /TKPWRAOEG with the other</p> <p>24 four doctors was that the victims died as a result</p> <p>25 of the heat but he determined that not all the</p>	<p>16</p> <p>1 the literature produced by Dr. Paul or Ms. Do and</p> <p>2 Mr. Hughes and produced here in court.</p> <p>3 MR. LI: I'm going to object again, Your Honor.</p> <p>4 All of the doctors said /TKW'E was dehydration was</p> <p>5 a component.</p> <p>6 THE COURT: Ladies and gentlemen, what's</p> <p>7 attorneys say in arguments? What's attorneys say</p> <p>8 is not evidence. Miss /PO poke.</p> <p>9 MS. POLK: Thank you. All of the doctors said</p> <p>10 that dehydration is useful information. The four</p> <p>11 doctors that testified, Dr. Paul, the four doctors</p> <p>12 and the medical literature does not require</p> <p>13 dehydration to diagnose heat stroke and</p> <p>14 nonexertional heat stroke. Dr. Dickson, who has</p> <p>15 treated, as he told you hundreds of heat stroke</p> <p>16 ^ patience ^ patients says it's not a required</p> <p>17 finding, and Dr. Mosley testified that you can have</p> <p>18 a well hydrated person die of heat stroke in a</p> <p>19 nonexertional setting such as a hot car in Phoenix.</p> <p>20 Dr. Paul also testified without testing he cannot</p> <p>21 rule out the possibility that the</p> <p>22 ^ patience ^ patients died of organo-phosphates</p> <p>23 poisoning and while Dr. Mosley, Dr. Lyon,</p> <p>24 Dr. Cutshall all agreed on cross-examination that</p> <p>25 they theoretically could not rule out the</p>

<p>1 possibilities of organo-phosphates poisoning they</p> <p>2 all testified that their original conclusion that</p> <p>3 the ^ patience ^ patients died of heat stroke</p> <p>4 remains</p> <p>5 MR LI Your Honor Dr Mosley did not</p> <p>6 testified I'm is very sore have I Dr Mosley he</p> <p>7 believed now that it was toxins Objection</p> <p>8 Misstates the testimony</p> <p>9 MS POLK Your Honor may we approach</p> <p>10 THE COURT Yes, you may</p> <p>11 THE COURT Go ahead</p> <p>12 THE WITNESS</p> <p>13 MS POLK It is absolutely uncalled for</p> <p>14 Mr Li should not be interrupting me The records</p> <p>15 what Mr Li in his rebuttal in his closing he</p> <p>16 pulled out little excerpts here and there out of</p> <p>17 context is not sufficient is not basis for him</p> <p>18 to keep /TRUP /-G the /TOET at of the evidence</p> <p>19 Dr Mosley stayed with his opinion they died of</p> <p>20 heat stroke</p> <p>21 MR LI That's not the case After he</p> <p>22 reading Dr Paul's report he changed his opinion he</p> <p>23 now believe /TPO*BGS could be at We read it</p> <p>24 directly from the transcript That's what he said</p> <p>25 THE COURT I think he stayed with his</p>	<p>19</p> <p>1 idea of organo-phosphates poisoning is so</p> <p>2 farfetched that he is not even willing to agree</p> <p>3 hypothetically that the victims died of</p> <p>4 organo-phosphates poisoning This was questioning</p> <p>5 that occurred on may 11 /HR*EP on page 146 of the</p> <p>6 transcript It was a question by Ms Do So can</p> <p>7 you concede the possibilities that perhaps one</p> <p>8 doctor against four, that one doctor is wrong and</p> <p>9 the answer from Dr Dickson I still don't see how</p> <p>10 it's one versus and then the question from Ms Do</p> <p>11 hypothetically hypothetically your the only one</p> <p>12 with this conclusion that is different /TPWR</p> <p>13 Dr Cutshall lie I don't know and Mosley and you</p> <p>14 will recall the answer from Dr Dickson when he</p> <p>15 said hypothetically, /PEUGZ can fly, I'm not going</p> <p>16 to concede that</p> <p>17 The state has the burden of proving that</p> <p>18 Mr Ray is guilty beyond a reasonable doubt On</p> <p>19 page 5 of your jury instructions is the instruction</p> <p>20 about reasonable doubt And it states that the</p> <p>21 state has the burden of proving Mr Ray guilty</p> <p>22 beyond a reasonable doubt This means the state</p> <p>23 must prove each elements of each charge beyond a</p> <p>24 reasonable doubt in civil cases it's only</p> <p>25 necessary to prove that a fact is more likely true</p>
<p>18</p> <p>1 original</p> <p>2 MR LI Your Honor we can show you the</p> <p>3 transcript</p> <p>4 THE COURT This is arguments I reminded</p> <p>5 /-TD jury repeatedly at this time There has been</p> <p>6 four months of testimony And if you have</p> <p>7 something that's just absolutely definite That's</p> <p>8 one thing You clearly don't at this time and this</p> <p>9 is arguments I've reminded /-TD jury now three</p> <p>10 times, I think This is the fourth time So</p> <p>11 Ms Polk you may continue</p> <p>12 MR LI Thank you Your Honor /PR-PB /EPB</p> <p>13 /EPB /-D ends bench /SKPWR-FRPBLGT SZ Ms Polk</p> <p>14 MS POLK Thank you Your Honor Moving</p> <p>15 ^ on to ^ onto organo-phosphates poisoning Dr Paul</p> <p>16 testified that without testing he cannot rule out</p> <p>17 the possibility of organo-phosphates poisoning</p> <p>18 And while Dr Mosley Dr Lyon and Dr Cutshall all</p> <p>19 agreed on cross-examination that they theoretically</p> <p>20 could not rule out the possibility of</p> <p>21 organo-phosphates poisoning, they all testified</p> <p>22 that their original conclusion, that the three</p> <p>23 ^ patience ^ patients died of heat stroke or</p> <p>24 exposure to heat remains</p> <p>25 You heard Dr Dickson testify that the</p>	<p>20</p> <p>1 than not or that it's truth is highly probable In</p> <p>2 criminal cases such as this The State's case must</p> <p>3 be more powerful than that It must be beyond a</p> <p>4 reasonable doubt Proof beyond a reasonable doubt</p> <p>5 is proof that leaves you firm /T*EU Li convinced of</p> <p>6 the defendants difficult And here's what this</p> <p>7 instruction says There are very few things in</p> <p>8 this world that we know with absolute certainty and</p> <p>9 in criminal cases, the law does not require proof</p> <p>10 that overcomes every doubt If, based on your</p> <p>11 consideration of the evidence you are firmly</p> <p>12 convinced that Mr Ray is guilty of the crimes</p> <p>13 charged, you must find him guilty If on the other</p> <p>14 hand you think there is a real possibility that</p> <p>15 Mr Ray is not guilty You must give him the</p> <p>16 benefit of the doubt and find him not guilty</p> <p>17 Think about that for a moment The language that</p> <p>18 there are few things in this world that we know</p> <p>19 with absolute certainty and in criminal cases, the</p> <p>20 law does not require proof that overcomes every</p> <p>21 doubt To doubt is human, there are few things in</p> <p>22 this world that we know with absolute certainty</p> <p>23 And you do not need to find proof to an absolute</p> <p>24 degree of certainty The question is whether the</p> <p>25 doubt is reasonable Doubt based on speculation is</p>

<p>21</p> <p>1 not reasonable doubt Doubt based on hypotheticals</p> <p>2 that assumes facts that are not true is not</p> <p>3 reasonable doubt Doubt based on the opinion of</p> <p>4 Dr Paul who admitted he knows very little about</p> <p>5 organo-phosphates, who admitted he has never treat</p> <p>6 aid patient for a life patient for</p> <p>7 organo-phosphates poisoning, who admitted he has</p> <p>8 never performed on autopsy on a /PEURB who died of</p> <p>9 organo-phosphates poisoning is not reasonable</p> <p>10 doubt Doubt, based on a house of card where every</p> <p>11 card is a joke /ER is not reasonable doubt</p> <p>12 Now the defense provided an article that</p> <p>13 is Exhibit 1 00 eight it's called gold /TPRAFRPGSZ</p> <p>14 /TOBGS could logic emergencies In this article,</p> <p>15 you were read some passages about a study performed</p> <p>16 by the American association of poison control</p> <p>17 centers And in this article it says that that</p> <p>18 study noted that the American association of poison</p> <p>19 control centers received over five thousand calls</p> <p>20 in five years about exposure to organo-phosphates</p> <p>21 and another \$25 000 calls about carbon 8 So that</p> <p>22 is 80 thousand calls in a five-year period in the</p> <p>23 United States regarding exposure to</p> <p>24 organo-phosphates and to carbomates Those calls</p> <p>25 are people spraying their rows /-Z, applying we'd</p>	<p>23</p> <p>1 THE COURT You play may</p> <p>2 MR LI This is an egg /SAPBL /PLTS the</p> <p>3 article 80 counsel first said five thousand /TOETD</p> <p>4 /AL expose it's 55 thousand ex pose /AOURZ</p> <p>5 Counsel is saying eight total it's eight eight year</p> <p>6 and that's an average and that average has remained</p> <p>7 constant</p> <p>8 MS POLK If I said five thousand I /PHAEPBD</p> <p>9 to say But it's date</p> <p>10 MR LI It's eight a year</p> <p>11 THE COURT There is an that is what's source</p> <p>12 is an exhibit</p> <p>13 MR LI Correct Your Honor</p> <p>14 THE COURT Thank you (End bench</p> <p>15 THE COURT Ms Polk</p> <p>16 MS POLK Let me just make sure I read that</p> <p>17 article I'm told I said five thousand instead of</p> <p>18 50,000 The information from the article is 50,000</p> <p>19 calls due to organo-phosphates in the five-year</p> <p>20 period with another \$25,000 calls concerning the</p> <p>21 carbomates And that on average eight people per</p> <p>22 year succumbed</p> <p>23 Moving on Dr Mosley testified that he</p> <p>24 would expect everyone in that tent to have suffered</p> <p>25 from the same symptoms if the /KAZ was</p>
<p>22</p> <p>1 killer to their lawns Spilling it on themselves</p> <p>2 Skill it on their kids Kids get into the</p> <p>3 pesticide getting these compounds on their skin or</p> <p>4 in their eyes Two a degree that causes them</p> <p>5 enough concern that they call the American</p> <p>6 association of poison control centers That figure</p> <p>7 of 80 thousand calls in a five-year period also</p> <p>8 arguably includes those who intentionally ingested</p> <p>9 organo-phosphates to commit suicide When you read</p> <p>10 this article, because in evidence you will also</p> <p>11 read that those statistic /A /PHRAOEUP to /A</p> <p>12 five-year period 1989 /KWRAETS to two 2002 All</p> <p>13 those those totals are large the number of reported</p> <p>14 organic /TPOS Rick ex pose /AOURZ reported to the</p> <p>15 American association of poison control centers in</p> <p>16 the last two years of this period declined by</p> <p>17 almost 20 percent Perhaps owing to the mass</p> <p>18 marketing and use of less toxic pesticides In</p> <p>19 five years according to this study Eight people</p> <p>20 out of 80 thousand ex pose /AOURZ died including</p> <p>21 possibly suicide attempts In this case that three</p> <p>22 people died at Angel Valley, not due to their</p> <p>23 exposure to extreme heat and humidity but to a</p> <p>24 pesticide that had been sprayed on the ground</p> <p>25 MR LI Your Honor may I approach</p>	<p>24</p> <p>1 organo-phosphates /POEUS owning On my six of 11</p> <p>2 on a question from Mr Hughes the question was it</p> <p>3 signs and symptoms that are on that ^ list ^ lift</p> <p>4 that we talked about are present for one person who</p> <p>5 went to the hospital and not present for others who</p> <p>6 went to the /HORBGS what would that tell you as far</p> <p>7 as whether there was organo-phosphates poisoning</p> <p>8 and Dr Mosley testified I would expect in a</p> <p>9 situation where multiple people are in the same</p> <p>10 environment, if they're having -- I would expect</p> <p>11 them to have similar symptoms and to fit the</p> <p>12 symptoms of the into the /TPAES /AOUR of the</p> <p>13 organo-phosphates toxidrome Well it's an</p> <p>14 imperfect fit</p> <p>15 Dr Lyon testified he had never seen</p> <p>16 anything had in his examination of either Kirby</p> <p>17 Brown oh /SKWHRAEURPLZ shore to lead him to</p> <p>18 /KPWHRAOEFL either had been exposed</p> <p>19 organo-phosphates poisoning and Dr Dickson</p> <p>20 testified while some of the signs and symptoms for</p> <p>21 organo-phosphates poisoning might overlap, these</p> <p>22 ^ patience ^ patients did not have signs and</p> <p>23 symptoms that fit in the box for the toxidrome for</p> <p>24 organo-phosphates poisoning</p> <p>25 Dr Dickson testified okay and this is</p>

<p>25</p> <p>1 in cross-examination by Ms. Do. I don't want to</p> <p>2 play semantics, this is the question from Ms. Do.</p> <p>3 I don't want to play semantics. My question to you</p> <p>4 is is it now your testimony that miosis pinpoint</p> <p>5 pupils and foaming is consistent with</p> <p>6 organo-phosphates as well as heat illness and</p> <p>7 Dr. Dickson said yes and the question from Ms. Do</p> <p>8 was okay so since it's could not /SES tents with</p> <p>9 organo-phosphates as well as heat illness you can't</p> <p>10 really testify doctor that all signs and symptoms</p> <p>11 are all in /SKOPB /SEUS tents with</p> <p>12 organo-phosphates correct and Dr. Dickson said yes</p> <p>13 I can because it's a big picture that comes down to</p> <p>14 it if you look at it it's like looking at /WUL</p> <p>15 little speck of the big picture and then he</p> <p>16 testified. And what we discussed thought Li a</p> <p>17 little while ago what kills people with</p> <p>18 organo-phosphates poisoning and that's what we're</p> <p>19 talking about. People that are dying or really</p> <p>20 really sick. And that's because they essentially</p> <p>21 drown. And a few questions later, he said these</p> <p>22 people didn't have those symptoms. Dr. Dickson</p> <p>23 further testified and when I look at these cases,</p> <p>24 we have several cases of people that lived, and</p> <p>25 died and I'm sorry, that lived and died that were</p>	<p>27</p> <p>1 to carbon dioxide and Dr. Dickson said yes, and the</p> <p>2 question from Mr. Hughes was do you have any idea</p> <p>3 how many you've treat ^ <Delete Space>d</p> <p>4 and ^ <Delete Space>ed and differential diagnosis</p> <p>5 said probably in the hundred ^ raining ^ range. To</p> <p>6 200 ^ raining ^ range it's a common problem</p> <p>7 Mr. Hughes asked have you ever treated</p> <p>8 ^ patience ^ patients for exposure to</p> <p>9 organo-phosphates Dr. Dickson said yes and are</p> <p>10 Mr. Hughes said do you have any idea how many</p> <p>11 you've treated and Dr. Dickson said, probably it's</p> <p>12 not that frequent. But we do have a lot of farming</p> <p>13 in our community. So probably about 10 I'd say and</p> <p>14 Mr. Hughes said is that 10 per year or 10 total and</p> <p>15 the answer was probably 10 total. The only doctor</p> <p>16 in this case who has treated life</p> <p>17 ^ patience ^ patients for organo-phosphates</p> <p>18 poisoning has rejected wholesale the notion that</p> <p>19 organo-phosphates caused the deaths of the three</p> <p>20 victims. And not a single doctor who testified in</p> <p>21 this case has ever seen a patient who has died of</p> <p>22 /OERP or ^ do not ^ done an autopsy on a patient</p> <p>23 who has died of organo-phosphates poisoning. For</p> <p>24 Dr. Dickson, not even the most serious case he ever</p> <p>25 treated resulted in death. Dr. Dickson testified</p>
<p>26</p> <p>1 success on their back with a mask on their</p> <p>2 /PWAEGTS. Now if you've got a mouthful of water</p> <p>3 that's going to keep going /KWAOUR requesting to</p> <p>4 kill these ^ patience ^ patients you're not going</p> <p>5 to help them and that's the big difference. I go</p> <p>6 back to the literature. This is a clinical</p> <p>7 diagnosis you have to look at clinically what the</p> <p>8 presentation was and these people didn't have those</p> <p>9 symptoms. Dr. Dickson lives and works in yaw /PHA</p> <p>10 Yuma both a hot place to live and please with</p> <p>11 numerous farms where pesticides are used. Doctor</p> <p>12 particular son told you he has treated people with</p> <p>13 heat stroke, hypercapnia which is the carbon</p> <p>14 dioxide /POEUS and with organo-phosphates</p> <p>15 poisoning. On May 10, Dr. Dickson told you the</p> <p>16 following. This is a question from Mr. Hughes, do</p> <p>17 you have any idea how many patients you've treated</p> <p>18 that have suffered from some sort of heat relate</p> <p>19 related illness. Probably 20 to 30 that I</p> <p>20 personally see a year a summer and of those do you</p> <p>21 have any idea how many patients you've seen that</p> <p>22 have suffered from nonexertional heat stroke and</p> <p>23 Dr. Dickson said probably I'd say a third of those</p> <p>24 Mr. Hughes then asked have you ever treated a</p> <p>25 patient for hypercapnia, which is the poisoning due</p>	<p>28</p> <p>1 in response to a question from Mr. Hughes and</p> <p>2 doctor you testified I believe towards the</p> <p>3 beginning of your testimony today that you had</p> <p>4 actually seen ^ patience ^ patients in your</p> <p>5 emergency departments who had been exposed to</p> <p>6 organo-phosphates. Dr. Dickson said yes, I have</p> <p>7 Mr. Hughes asked, have you ever had a patient who</p> <p>8 actually died from organo-phosphates. Dr. Dickson</p> <p>9 said I have not. Mr. Hughes asked, have you ever</p> <p>10 seen a patient who was critically ill from</p> <p>11 organo-phosphates and Dr. Dickson said generally</p> <p>12 no. In today's environments the concentration is</p> <p>13 pretty /HRE. It's drooling and we treat it with</p> <p>14 atropine and one or two doses normally /SOFZ a</p> <p>15 problem. There is an in the lay /TRAQ four people</p> <p>16 who take massive /APLTSZ of medication and another</p> <p>17 anti /TKOED I've never seen a patient that has gone</p> <p>18 that far. Mr. Hughes asked how about the patients</p> <p>19 you testified you've seen who were the farm workers</p> <p>20 working with industrial organo-phosphates. Have</p> <p>21 you seen any of them who are critically even</p> <p>22 critically ill and Dr. Dickson said no.</p> <p>23 Mr. Hughes asked and then you mentioned military</p> <p>24 personnel who had -- did you say a crop does /TER</p> <p>25 dropped organo-phosphates on them and Dr. Dickson</p>

<p>29</p> <p>1 said correct And Mr Hughes said, did you see any</p> <p>2 of them that were critically ill and the doctor</p> <p>3 from Dr Dickson was no Just drooling was the</p> <p>4 most that I saw And then one or two ^ dose ^ doze</p> <p>5 /Z of atropine and they were better Dr Dickson</p> <p>6 also was asked on May 5 from Mr Hughes, and you</p> <p>7 mentioned you heard about it in medical school</p> <p>8 Have you ever in your practice both as a medical</p> <p>9 student or resident or in your fellowship or</p> <p>10 in your professional career since then Have you</p> <p>11 ever actually seen a patient who has died /TPWR</p> <p>12 organo-phosphates and the answer from Dr Mosley</p> <p>13 was no Dr Dickson then went ^ on to ^ onto</p> <p>14 rule out organo-phosphates poisoning as a potential</p> <p>15 cause of death in this case This again was a</p> <p>16 question from Mr Hughes in reaching your</p> <p>17 determination as to the cause of death of</p> <p>18 Ms Neuman, Ms Brown and Mr Shore, did you</p> <p>19 consider whether other factors such as</p> <p>20 organo-phosphates could have played a role and the</p> <p>21 from Dr Dickson was again when you go through the</p> <p>22 /ED medical records those doctors as I said earlier</p> <p>23 did a good job When you have a patient like that</p> <p>24 you need to look through all the different causes</p> <p>25 And they considered it And they gave good reasons</p>	<p>31</p> <p>1 possibilities of organo-phosphates poisoning This</p> <p>2 is pure speculation And it requires you to ignore</p> <p>3 everything the doctors did that night and the</p> <p>4 testimony of the doctors who testified that in</p> <p>5 order to find organo-phosphates poisoning all the</p> <p>6 signs and symptoms need to fit neat Li in the box</p> <p>7 in the toxidrome</p> <p>8 I want to talk just briefly about those</p> <p>9 boxes those /TPHE Monday /EUBGZ that you saw</p> <p>10 throughout this trial The sludge M and the</p> <p>11 dumbbells First consider what the purpose of</p> <p>12 those /TPHE Monday /EUBGZ is Mnemonics This is</p> <p>13 a question from Mr Hughes to Dr Mosley Can you</p> <p>14 tell us again what the knew Monday sick meant to</p> <p>15 do Why was, /TKWR does it exist Dr Mosley</p> <p>16 responded to help ER doctors, MD or doctors,</p> <p>17 recognize it as a syndrome You might not suspect</p> <p>18 it unless you -- and the quicker you realize it,</p> <p>19 the better off the patient is It's the</p> <p>20 constellation of the symptoms that should /TAEUG</p> <p>21 /TKPWER a doctor treating a patient to think about</p> <p>22 it Second, consider the testimony in this case</p> <p>23 has been that no patient had that constellation of</p> <p>24 signs and symptoms that fit neat Li in the box To</p> <p>25 indicate organo-phosphates poisoning This is a</p>
<p>30</p> <p>1 why it wasn't evidence of the what their called</p> <p>2 toxidromes The other things like cholinergic or</p> <p>3 organo-phosphates anticholinergic, carbon monoxide</p> <p>4 poisoning, drugs, they looked or attempted to treat</p> <p>5 any of those and basically checked off that they</p> <p>6 ruled them out You have had played for you many</p> <p>7 times the audio clip the background information</p> <p>8 in the dining hall on the evening of October 8 when</p> <p>9 the detectives were doing their interviews You</p> <p>10 have heard several times somebody on that audio</p> <p>11 clip say well maybe it was carbon monoxide with</p> <p>12 maybe some organo-phosphates mixed in But just</p> <p>13 heard from Dr Dickson that when he reviewed all</p> <p>14 the medical records pertaining to all 18</p> <p>15 ^ patience ^ patients he saw that the doctors had</p> <p>16 considered all of those possibility The /K-PBL I</p> <p>17 can, the anticholinergic and all of the doctors</p> <p>18 after considering it have ruled it out In</p> <p>19 /SPAQUD of all that /TEFTD The /TKPEPBS still</p> <p>20 asks that you go back to the night of October 8</p> <p>21 That you hand pick isolated signs and symptoms that</p> <p>22 would be consistent with organo-phosphates</p> <p>23 poisoning, but that overlap with heat stroke, that</p> <p>24 you second guess all the doctors and that you</p> <p>25 conclude on your own that you cannot rule out the</p>	<p>32</p> <p>1 question of Mr Hughes, of doctor deck son</p> <p>2 Mr Hughes asked Did any of the 18</p> <p>3 ^ patience ^ patients who went to the hospital Do</p> <p>4 you know whether any of them exhibited Ted signs</p> <p>5 and symptoms consistent with a cholinergic or</p> <p>6 anticholinergic toxidrome and differential</p> <p>7 diagnosis responded nobody fell into that category</p> <p>8 We talked a little bit earlier Some people, some</p> <p>9 of their symptoms could be partly cholinergic, some</p> <p>10 of their symptoms can be anti /K-PBL I can when you</p> <p>11 have a toxidrome you need to put them into the box</p> <p>12 and nobody fell into any of those boxes So no</p> <p>13 Dr Dickson testified there is simply no pay a</p> <p>14 treating doctor who ever confuse an</p> <p>15 organo-phosphates with heat stroke He explained</p> <p>16 to you That a person suffering from</p> <p>17 organo-phosphates poisoning would have fluids</p> <p>18 pouring from every possible or physician And that</p> <p>19 the patient dies by drowning in their own spit</p> <p>20 This is consistent with the article provided by</p> <p>21 Dr Paul to Ms Do and Mr Hughes, and again this</p> <p>22 is the Exhibit 100 eight The gold /TPRAFRPBGS</p> <p>23 article Gold /TPRAFRPBGS, I'm going to read from</p> <p>24 page 1508 /AE a summary of the article where it's</p> <p>25 written secretions from every or physician may</p>

<p>33</p> <p>1 become copious and hinder resuscitation efforts and</p> <p>2 /SKWU to think about all the evidence in this case</p> <p>3 and did one single first respond he /ER, one single</p> <p>4 EMT one single doctor ever talk about secretions</p> <p>5 from every or physician that were so copious that</p> <p>6 they hindered their resuscitation efforts</p> <p>7 Dr Paul's opinion has no credibility for</p> <p>8 10 reasons First of all, heat stroke is outside</p> <p>9 of his area of expertise, he has never treated a</p> <p>10 patient for heat stroke He's never treated a life</p> <p>11 patient for heat stroke Dr Paul has done 10 to</p> <p>12 12 autopsies on ^ patience ^ patients where he</p> <p>13 concluded heat stroke and in all of those cases he</p> <p>14 had no documented temperature and he had no</p> <p>15 documented dehydration Organo-phosphates</p> <p>16 poisoning is outside of the area of expertise of</p> <p>17 Dr Paul Again, he has never treated a life</p> <p>18 patient with organo-phosphates poisoning He's</p> <p>19 never did not an autopsy on a patient with</p> <p>20 organo-phosphates poisoning His colleagues have</p> <p>21 never done an autopsy on a patient with</p> <p>22 organo-phosphates poisoning Dr Paul testified</p> <p>23 that he talked to a colleague in another state !</p> <p>24 believe it was /K*EPB Kentucky who ^ ones ^ once</p> <p>25 did an autopsy on a patient who worked in the</p>	<p>35</p> <p>1 witness to ignore the actual evidence and assume</p> <p>2 that if something else were true then what would</p> <p>3 their answer be Dr Dickson again, the only</p> <p>4 doctor who has ever treated organo-phosphates</p> <p>5 poisoning would not even hypothetically allow that</p> <p>6 organo-phosphates could have caused the three</p> <p>7 deaths in this case I'm going to talk briefly</p> <p>8 about the issue of testing The /TKPEPBS has told</p> <p>9 you in this case that the state did not preserve</p> <p>10 samples from the victims That's false The M</p> <p>11 /EFPLZ told you they preserved samples and the</p> <p>12 samples were equally available to all parties for</p> <p>13 testing when the state learned on January 31 when</p> <p>14 we interviewed of this year when we interviewed</p> <p>15 Dr Paul that he could not eliminate</p> <p>16 organo-phosphates due to the absence of testing,</p> <p>17 what did we do We tested Now you learned in</p> <p>18 this trial that Dr Paul was retained in May</p> <p>19 of 2010 and that he formed an opinion then that his</p> <p>20 opinion did not change between May of 2010 and</p> <p>21 January of 2011, the date of his report And he</p> <p>22 told you he did not put in his report the opinion</p> <p>23 he gave you from the stand That organo-phosphates</p> <p>24 in his opinion needed document eliminated by</p> <p>25 testing Dr Paul told you the reason he did not</p>
<p>34</p> <p>1 tobacco fields with any could teen pose /OPBG after</p> <p>2 prolonged exposure to tobacco Toxicity by</p> <p>3 Dr Paul's own admission is outside of his area of</p> <p>4 expertise He told you he had no idea what level</p> <p>5 of toxicity it would take to even cause a death due</p> <p>6 to organo-phosphates poisoning Dr Paul told you</p> <p>7 he did consult with a toxicologist about this case,</p> <p>8 who did not suggest to him any organo-phosphates</p> <p>9 compound that could have caused the deaths</p> <p>10 Dr Paul has a wonderful resume /AOEUP not</p> <p>11 suggesting otherwise But his opinion in this case</p> <p>12 has no credibility Again I'll remind you of the</p> <p>13 cross-examination of Dr Dickson by Ms Do when she</p> <p>14 tried to essentially pressure him into agreeing</p> <p>15 that hypothetically organo-phosphates poisoning</p> <p>16 could have caused the deaths by calling him an out</p> <p>17 liar This is not 5th grade This is not medicine</p> <p>18 by peer pressure Yes three of them agreed that</p> <p>19 hypothetically they could not rule out</p> <p>20 organo-phosphates due to the overlapping symptoms</p> <p>21 and they were asked if someone told you that</p> <p>22 organo-phosphates was suspected would you test for</p> <p>23 it But again, you can get a witness to agree to a</p> <p>24 lot of questions if you give them hypotheticals</p> <p>25 The problem with hypotheticals is they ask a</p>	<p>36</p> <p>1 put his conclusion concerning organo-phosphates in</p> <p>2 the report was that he did not have medical records</p> <p>3 of one one of the 18 ^ patience ^ patients Stephen</p> <p>4 Ray But on January 31 /WH-TS state first learns</p> <p>5 from Dr Paul of his opinion, that he couldn't</p> <p>6 eliminate organo-phosphates because they weren't</p> <p>7 tested for, what did we do We put our heads in</p> <p>8 the sand and refuse to follow the evidence? No</p> <p>9 Detective Diskin testified about what we did</p> <p>10 Detective Diskin had a conversation with the</p> <p>11 medical examiner from Coconino County Dr Mosley</p> <p>12 and asked if he would send the Sam sample of Liz</p> <p>13 Neuman for testing of organo-phosphates compound</p> <p>14 Detective Diskin told you he had a /KWOFGRS</p> <p>15 Dr Lyon is asked the same thing Off went the</p> <p>16 samples to the labs to A I T and M N S the private</p> <p>17 labs Dr Mosley told you that he told Detective</p> <p>18 Diskin that testing for organo-phosphates in the</p> <p>19 blood could be useful, because if the test came out</p> <p>20 positive it would tend to suggest the presence of</p> <p>21 organo-phosphates So the samples were tested and</p> <p>22 what were the results, as you heard from the stand</p> <p>23 the results from negative, the samples came back</p> <p>24 negative no organo-phosphates in those samples,</p> <p>25 then the state learned from the labs that those</p>

<p>37</p> <p>1 results may not be reliable And what did we do</p> <p>2 with that information Within two working days we</p> <p>3 sent a letter as you heard to the defense Telling</p> <p>4 them we had learned that that test may not be</p> <p>5 reliable Now, the defendant and the /TKPEPBS has</p> <p>6 no obligation to test But these blood samples</p> <p>7 have been equally available to the par test</p> <p>8 parties A second issue about this testing for</p> <p>9 organo-phosphates is that there simply is no good</p> <p>10 test for organo-phosphates presence And that's</p> <p>11 whether it's then or 14 months later Again, you</p> <p>12 heard the suggestion from somebody an unknown</p> <p>13 person in that audiotape an EMT a paramedic, a</p> <p>14 fire fighter a volunteer with one of those</p> <p>15 organizations no one /TPHOERBGS because that person</p> <p>16 never came forward nor did his concern about</p> <p>17 organo-phosphates are make it to any doctor or to</p> <p>18 the detective You recall /KRAERL that his</p> <p>19 statement was simply that maybe it was carbon</p> <p>20 monoxide, which you know was ruled out or maybe</p> <p>21 with some organo-phosphates mixed in But here's</p> <p>22 the simple facts /OER the next few days no doctor</p> <p>23 ever tested for organo-phosphates Because it was</p> <p>24 never indicated This notion that the</p> <p>25 ^ patience ^ patients could have died from</p>	<p>39</p> <p>1 This record also shows down here at the bottom no</p> <p>2 die to /RE /SEUS, which would be the excessive</p> <p>3 sweating that you would expect with</p> <p>4 organo-phosphates, remember the pouring of fluids</p> <p>5 from every or /SEUS Seven Ray will no such</p> <p>6 excessive sweating And you will see her it's</p> <p>7 written this particular was /TKPWQUPBD acutely</p> <p>8 altered mental status The /HAL mark of heat</p> <p>9 stroke Now, page 7 oh nine three of Stephen Ray's</p> <p>10 medical records, shows you this And this is</p> <p>11 medical notations on 70 ^ raise ^ race records that</p> <p>12 Dr Dickson pointed you to when he testified</p> <p>13 Because it contains the thought processes of the</p> <p>14 doctors as they rapidly worked trying to look at</p> <p>15 all possible causes, eliminating and /TPHAR /ROEG</p> <p>16 it in so they could /TPEG out what the particular</p> <p>17 treatments of /STEF Ray was Keep in mind no</p> <p>18 patient including Mr Ray was ever treated for</p> <p>19 organo-phosphates poisoning This is the emergency</p> <p>20 department course and medical decision making</p> <p>21 Mr Stephen Ray is a 46 year old ^ mail ^ male</p> <p>22 presenting to the emergency department for acute</p> <p>23 mental status Given the station of the event, the</p> <p>24 differential diagnosis, not you recall are the</p> <p>25 different possibilities that the doctors are</p>
<p>38</p> <p>1 organo-phosphates poisoning is a complete red</p> <p>2 hearing on their own the very doctors who treated</p> <p>3 the ^ patience ^ patients saw no indication of</p> <p>4 organo-phosphates poisoning and did not order any</p> <p>5 tests As you heard, the doctors saw no clear</p> <p>6 pattern that the signs and symptoms fit into the</p> <p>7 toxidrome for organo-phosphates poisoning Either</p> <p>8 cholinergic or anticholinergic and as you heard</p> <p>9 some ^ patience ^ patients fell in column A some</p> <p>10 ^ patience ^ patients fell in column B, but what</p> <p>11 you know from all the evidence is that no doctor</p> <p>12 ever tested for organo-phosphates because no doctor</p> <p>13 ever saw indications that such a test would be</p> <p>14 necessary Or useful Now I want to talk about</p> <p>15 Stephen Ray's medical records just briefly to show</p> <p>16 you how the doctors from the Flagstaff Medical</p> <p>17 Center worked with Arizona poison control to</p> <p>18 eliminate toxins including organo-phosphates What</p> <p>19 Dr Dickson explained to you How the doctors</p> <p>20 called Arizona poison control is illustrated in</p> <p>21 these medical records of Stephen Ray This is</p> <p>22 Exhibit 2 one three the medical records of Stephen</p> <p>23 Ray and this is page 7 oh one 7091 This is the</p> <p>24 emergency department encounter showing the chief</p> <p>25 complaint the altered mental status and seizure</p>	<p>40</p> <p>1 working with at the time The different</p> <p>2 differential diagnosis at presentation included</p> <p>3 acute carbon monoxide poisoning Acute sigh need</p> <p>4 poisoning Acute anoxia, acute hyper /THERP yeah</p> <p>5 and /A ^ queued ^ cued toxidrome So in the</p> <p>6 beginning, that's what they're looking for All of</p> <p>7 those possibilities including this toxidrome In</p> <p>8 other words, the organo-phosphates poisoning The</p> <p>9 patient was having seizures at the time of</p> <p>10 presentation Given this and his altered mental</p> <p>11 status</p> <p>12 THE WITNESS I immediately made the decision</p> <p>13 to /EUB /TAOU bate him for air way protection</p> <p>14 There was /PHREURPBD without any difficulty or</p> <p>15 complication And remember, with organo-phosphates</p> <p>16 poisoning the effort to in thank you bate according</p> <p>17 to gold /TPRAFRPBGZ is often too difficult because</p> <p>18 of the heavy secretions with Stephen Ray, no</p> <p>19 problem they intubated him Again completely</p> <p>20 inconsistent with organo-phosphates poisoning</p> <p>21 Immediately /A /PRO /PO fill drp was gun to treat</p> <p>22 the ^ patience ^ patients seizure One on /PRO /PO</p> <p>23 fill the patient never showed any evidence of</p> <p>24 recurrent seizure activity Laboratones studies</p> <p>25 were obtained These were significant for an</p>

<p>41</p> <p>1 elevation in the see /RUPL Evidence, or /TROEB 2 /KWRAPB evidence of metabolic acidosis and an /AL 3 elevated white blood ^ sell ^ cell counts 4 interesting the ^ patience ^ patients carbon 5 monoxide was zero, virtually ruling out carbon 6 monoxide poisoning You can see the thought 7 process They start big, they eliminate They 8 narrow down Now there was some evidence of 9 anticholinergic toxidrome This included the 10 tachycardia the hype per /THERPL yeah the 11 hypertension However the patient has moist skin 12 and pinpoint pupils There argued against The 13 ^ patience ^ patients /HAOEPL /TKPWRO Lynn normal 14 which would be unusual in the case of acute sign 15 I'd /POEUS /-PBG Again he limb /TPHAEUD /-G I 16 spoke at ^ length ^ lent with Dr Boyer down at the 17 Arizona poison control She suggested that carbon 18 monoxide was still a possibility that the patient 19 may have just cleared at this point After 20 discussing 70 ^ raise ^ race case with Dr Boyer, 21 now they're looking at carbon monoxide still 22 trying to be /HRAEUPL /TPHAEUT The doctor says I 23 continued to believe that acute hyperthermia and 24 subsequent seizure was the most likely cause of 25 this ^ patience ^ patients presentation given the</p>	<p>43</p> <p>1 Ray records is to help you see how early on 2 /EPLTSZ's paramedics doctor they don't know what's 3 happened many testified as Detective Diskin 4 testified it didn't occur to anybody at that time 5 that somebody would intentionally expose 6 participants to such extreme heat that they would 7 suffer heat stroke These records show you that 8 early on the doctors are looking at everything 9 including the toxidromes or organo-phosphates 10 poisoning That they talked to Arizona poison 11 control and it's a process of limb nation and they 12 narrow, narrow it down The second point about 13 organo-phosphates testing is that there is no 14 reliable diagnostic test for organo-phosphates 15 Dr Dickson told you that And again, this exhibit 16 provided by the defense exhibits 1008 gold frank's 17 toxicologic /PHERPBL /SEUZ says the same thing 18 This is on page 1504 and I have it high /HRAEUTS 19 /-D where this article says up fortunately although 20 unne and sir /UPL /A says for organo-phosphates 21 pounds and their metabolites are being investigated 22 such testing is rarely obtainable within a few 23 minutes or hours Moreover normal ranges and toxic 24 /HR*ELZ are not ^ established ^ accomplished 25 foremost compounds</p>
<p>42</p> <p>1 incident involving sitting in a hot sweat lodge for 2 a prolonged period of time After talking at 3 ^ length ^ lent with Dr Boyer down at the Arizona 4 poison control, the doctor was not led to 5 organo-phosphates poisoning, instead things were 6 eliminated and they're /TPHAR /ROEG it down and 7 this doctor continued to believe that heat was the 8 issue Now this record for Stephen Ray does go on 9 upon discharge this is the assessment plan In 10 hear this doctor days /SEU this /PAERB does not 11 appear to have heat stroke and there is no evidence 12 of carbon monoxide poisoning This doctor as you 13 just saw, concluded no heat stroke and this doctor 14 concluded acute renal failure, likely related to 15 his fasting state resolved with /RE hydration, and 16 then the headache finally however when Mr Ray was 17 discharged his rehab diagnosis included the 18 reference to anoxia to the brain due to the very 19 hot and crowded sweat lodge Let me see if I can 20 pull that up for you here This is page 21 something something oh four ever of Mr Ray's 22 medical records You can see here The rehab 23 services and the directions include rehab services 24 diagnosis Anoxia to the brain due to very hot and 25 crowded sweat lodge The relevance of the Stephen</p>	<p>44</p> <p>1 Another useful research tool is the 2 measurements of the A C H E actively in neuro 3 natural tissue this requires credit in is or knew 4 row natural tissue biopsies and even then this test 5 is not very helpful unless the buys line is known 6 Currently the study for verifying the Colin he is 7 trace is a measure Cholinesterase trace in 8 readily accessible tissue such as the plasma and he 9 /REUGT /RO ^ cites ^ sights ^ sites And that is 10 /-S you will recall could be /SEUS 20 what 11 Dr Dickson told you How in the emergency room to 12 test for organo-phosphates poisoning it's only 13 useful if you know a baseline of the 14 ^ patience ^ patients readings and it's only useful 15 as you continue to test overtime and the purpose of 16 the testing is to determine whether /ORPB the 17 patient is actually responding favorably to the /A 18 protein to the treatment for organo-phosphates 19 Just a few words about that large exhibit that /-TD 20 defense had it up on my screen a few moments ago 21 that purport to display the key medical facts in 22 Dr Paul's words about the ^ patience ^ patients 23 records Aside from the obvious that you've heard 24 now over and over again that the signs and symptoms 25 that Dr Paul testified about are overlapping and</p>

<p>45</p> <p>1 consistent with both heat stroke and</p> <p>2 organo-phosphates, there are two facts that are</p> <p>3 glancing Li missing from that large exhibit First</p> <p>4 of all, that exhibit completely left off the super</p> <p>5 heated environment in which the</p> <p>6 ^ patience ^ patients spent two hours in /SAERG</p> <p>7 heat and humidity before they fell I will, and</p> <p>8 second that exhibit left off the altered mental</p> <p>9 status that's ^ patience ^ patients experienced</p> <p>10 The hallmark of heat stroke And that large</p> <p>11 calendar that Mr Li had that he flipped through</p> <p>12 month after month What was missing from that</p> <p>13 large calendar What was missing were the hundreds</p> <p>14 of hours of interviews that Detective Diskin</p> <p>15 testified that he had ^ do not ^ done All of</p> <p>16 which as he testified pointed him to not some</p> <p>17 mysterious toxin but to the extreme /TPHAE tour of</p> <p>18 Mr Ray's heat events As the focus of his</p> <p>19 investigation and the cause of death Let's just</p> <p>20 talk briefly about Dr Dickson and Dr Paul First</p> <p>21 of all both of the states medical examiners</p> <p>22 Dr Lyon and Dr Mosley who did the autopsy on the</p> <p>23 three victims ruled heat stroke and hyperthermia as</p> <p>24 a result of a prolonged exposure to that sweat</p> <p>25 lodge So why did the state get another doctor</p>	<p>47</p> <p>1 medical examiners have ever treated a patient for</p> <p>2 organo-phosphates poisoning You heard Dr Paul</p> <p>3 testify that the fact that some</p> <p>4 ^ patience ^ patients had pinpoint pupils was a red</p> <p>5 flag for him But in fact, as you saw on the</p> <p>6 chart only four out of 18 ^ patience ^ patients</p> <p>7 had pinpoint pupils And according to Dr Mosley,</p> <p>8 that is completely could not /SES tents with who</p> <p>9 actually died, because in doctor /PHOEZ Liz opinion</p> <p>10 they probably suffered from lack of oxygen causing</p> <p>11 the pinpoint pupils On May 6 of 2011, Dr Mosley</p> <p>12 testified as following From a question by</p> <p>13 Mr Hughes, which was I think just before the break</p> <p>14 you had mentioned that you had heard from</p> <p>15 participants that or from their reports that there</p> <p>16 may be areas in the sweat lodge that had fresher</p> <p>17 air or less fresh air and Dr Mosley said yes and</p> <p>18 Mr Hughes said and that ex /PHRAEUPD or does it</p> <p>19 ex /PHRAEUP why some people presented to the</p> <p>20 different loss of consciousness hospital with</p> <p>21 miosis and some people didn't presents with miosis</p> <p>22 and Dr Mosley said I think it would account for</p> <p>23 that Mr Hughes said well can you explain that</p> <p>24 Credit Mosley said well, if someone has is in an</p> <p>25 area of a tent ^ higher ^ hire level of carbon</p>
<p>46</p> <p>1 Why did we go out and ^ higher ^ hire Dr Dickson</p> <p>2 The answer is to have someone look at all the</p> <p>3 medical records of all the ^ patience ^ patients</p> <p>4 Not just the three who passed away All three</p> <p>5 medical examiners including Dr Paul say that for</p> <p>6 heat stroke there is nothing in the autopsy that</p> <p>7 indicates it In other words it's a negative</p> <p>8 finding, you make your decision based on /-TD</p> <p>9 elimination of natural causes the limb nation of</p> <p>10 trauma and you look to the environments where the</p> <p>11 patient was in before they fell I will All the</p> <p>12 medical examiner can do in the autopsy is rule out</p> <p>13 and then look to the environment Dr Dickson on</p> <p>14 the other hand specialized in diagnosing and</p> <p>15 treating illnesses in life ^ patience ^ patients</p> <p>16 and examined all the medical records in this case</p> <p>17 The only doctor who testified in this case who has</p> <p>18 ever treated a patient for heat stroke, a live</p> <p>19 patient for heat stroke is doctor Dr Dickson The</p> <p>20 only doctor who testified in this case who has ever</p> <p>21 treated a life patient for organo-phosphates</p> <p>22 poisoning is Dr Dickson None of the medical</p> <p>23 examiners nor Dr Lyon Dr Mosley or Dr Paul have</p> <p>24 ever treat add live patient for heat stroke And</p> <p>25 none of them have ever treated None of the</p>	<p>48</p> <p>1 dioxide I would he can /PEBGT them to have miosis</p> <p>2 whereas a person ^ who is ^ whose getting fresh air</p> <p>3 wouldn't have it The defense in the case is look</p> <p>4 away defense Distract the jury with pinpoint</p> <p>5 pupils and hope they'll forgets the /EFPD that is</p> <p>6 right in front of them Based on the comments of a</p> <p>7 first respond /ER at the scene that night and four</p> <p>8 ^ patience ^ patients with pinpoint pupils,</p> <p>9 concludes that death came from some random patches</p> <p>10 the pesticides sprayed at a property where</p> <p>11 chemicals essentially are not used and ignore the</p> <p>12 super heated environment where all three</p> <p>13 ^ patience ^ patients suffered intense heat and</p> <p>14 intense humidity for two hours immediately</p> <p>15 preceding their deaths The fact is that night no</p> <p>16 one, not the paramedics, the doctors, the cops,</p> <p>17 Detective Diskin, no one thought that anyone would</p> <p>18 be so reckless as to deliberately ex pose people to</p> <p>19 extreme heat and ignore those who fell /SKPEUL</p> <p>20 unconscious in his tent</p> <p>21 MS POLK Good time to take a break</p> <p>22 THE COURT Yes Ms Polk Thank you Ladies</p> <p>23 and gentlemen we will take the morning recess at</p> <p>24 this time Remember the admonition Could do not</p> <p>25 talk about the case to anyone including among</p>

<p>49</p> <p>1 yourselves You will be ordenng lunch at this</p> <p>2 break and I had bland to go into the lunch hour</p> <p>3 If anybody has special die /TREU needs We'll just</p> <p>4 see where things are In any event you will be</p> <p>5 having lunch here even if you're not deliberating</p> <p>6 yet You will be having lunch ordenng /HRUPB</p> <p>7 Remember /RA*EUTD please be reassembled 11 00 I'm</p> <p>8 going to ask the parties to remain just a moment</p> <p>9 Thank you</p> <p>10 THE COURT The record will show the jury has</p> <p>11 left the courtroom I just ^ wanted to ^ want</p> <p>12 today talk a bit about schedule /AOULG As I</p> <p>13 indicate /-D to the jurors We're going to go</p> <p>14 ahead and have lunch ordered for them Ms Polk I</p> <p>15 would go over into noon I don't know if you have</p> <p>16 an estimate of your time</p> <p>17 MS POLK Your Honor I would hope to be</p> <p>18 finished by noon</p> <p>19 THE COURT All right We'll just man on</p> <p>20 that</p> <p>21 MS POLK I may go a little over But not</p> <p>22 over an hour (Recess taken) One two three</p> <p>23 THE COURT The record will show the presence</p> <p>24 of the defendant Mr Ray The attorneys and the</p> <p>25 jury Ms Polk you may continue</p>	<p>51</p> <p>1 First Amendment applies to everyone in this</p> <p>2 country Including the Hamiltons in term /-G</p> <p>3 credibility of witnesses, you are not to look at</p> <p>4 the rights the religious beliefs and the spiritual</p> <p>5 beliefs of /WEUS including Mr Ray What you're</p> <p>6 supposed to look at in determining credibility is</p> <p>7 found on page 2 of your jury instructions,</p> <p>8 understand the instruction called credibility of</p> <p>9 witnesses This instruction gives you a number of</p> <p>10 factors to look at in determining credibility and</p> <p>11 tells you to consider all of the evidence in light</p> <p>12 of reason common sense and experience The factor</p> <p>13 ^ lifted ^ listed in this jury instructions about</p> <p>14 what you should be about how you should be</p> <p>15 determining credibility of witnesses are in fact</p> <p>16 the same things that Detective Diskin told you</p> <p>17 about from the stand when he testified about how</p> <p>18 does he determine credibility as he's going about</p> <p>19 his investigations and talking to witnesses The</p> <p>20 factors include a witnesses ability to see or hear</p> <p>21 the things the witness testified to The quality</p> <p>22 of the witnesses memory, the witnesses manner while</p> <p>23 testifying, whether the witness has any motive bias</p> <p>24 or prejudice, whether they were contradicted by</p> <p>25 prior statements, whether the witness was granted</p>
<p>50</p> <p>1 MS POLK Thank you, Your Honor We spent</p> <p>2 days in this trial talking about the wood and the</p> <p>3 rat poison yet there is not a single sled of</p> <p>4 evidence that the victims suffered any symptoms</p> <p>5 that could have been caused by wood or the wrong</p> <p>6 wood or the rat poison There has not been any</p> <p>7 suggestion or medical testimony at all that any of</p> <p>8 the victims died as a result of rat poisoning which</p> <p>9 as you learned would cause a person to /WHRAOED to</p> <p>10 death The did he /TPWAEPBTS you to focus on all</p> <p>11 the evidence we did not find and all the strange</p> <p>12 places the evidence did not lead Detective Diskin</p> <p>13 followed the evidence and there is simply no</p> <p>14 evidence that pesticides, that the wrong wood, or</p> <p>15 that rat /POEUS /OPBS some how caused these deaths</p> <p>16 I want to talk just briefly about the testimony of</p> <p>17 the Hamiltons On page 5 of your jury instructions</p> <p>18 you have an instruction that talks about the First</p> <p>19 Amendment and it says that the First Amendment of</p> <p>20 the United States constitution guarantees every</p> <p>21 citizen freedom of speech and religion, thus you</p> <p>22 must not be prejudiced or biased for or against</p> <p>23 Mr Ray simply because you may or may not disagree</p> <p>24 or dislike the content of Mr Ray's speech,</p> <p>25 religious and or spiritual beliefs and ideas The</p>	<p>52</p> <p>1 an immunity agreement and the reasonable necessary</p> <p>2 of the witness's testimony in light of the other</p> <p>3 evidence learned at the trial Judge the Hamiltons</p> <p>4 testimony ladies and gentlemen, not by nd /KAOULG</p> <p>5 their beliefs, but by looking at other objective</p> <p>6 factors First of all, no immunity was given to</p> <p>7 the Hamiltons Second, Detective Diskin told you</p> <p>8 they were always cooperative whether their attorney</p> <p>9 was present or not And then finally, look at all</p> <p>10 the testimony of all the other witnesses who could</p> <p>11 rob rated what the /HAEUPL had to say and</p> <p>12 specifically, the policy at Angel Valley about the</p> <p>13 use of chemicals and their belief they wanted to</p> <p>14 use as few chemicals as possible to respect all of</p> <p>15 life out at Angel Valley Five different witnesses</p> <p>16 testified to this policy, Michael Hamilton, Amayra</p> <p>17 Hamilton, Debby Mercer, Ted Mercer and Fawn Foster</p> <p>18 Now, the Mercers testified very consistent with the</p> <p>19 Hamiltons that there is a policy that they are not</p> <p>20 to use chemicals at all And you will remember</p> <p>21 that the Mercers testified that they had had some</p> <p>22 sort of falling out with the Hamiltons and that</p> <p>23 they had left Angel Valley long before this trial</p> <p>24 began So in determining the credibility of</p> <p>25 witnesses, keep in mind that the Mercers had no</p>

<p>53</p> <p>1 motive to some how be part of a conspiracy to</p> <p>2 conceal chemicals at avenue because in fact they</p> <p>3 told you they had left Angel Valley and they had a</p> <p>4 falling out with the /HAEUPL The Mercers are not</p> <p>5 being sued by anyone They testified to that And</p> <p>6 they have been given no immunity agreements</p> <p>7 Remember Debby Mercer when one of the defense</p> <p>8 attorneys asked Debby if Rotillo perhaps had</p> <p>9 /PWAUTS the chemicals with his own money /PWRAUTD</p> <p>10 them to Angel Valley and sprayed them there,</p> <p>11 remember her reaction how she laughed /A out loud</p> <p>12 at the suggestion that Rotillo would go purchase</p> <p>13 chemicals with his own money and spray them at</p> <p>14 Angel Valley without anybody knowing Every single</p> <p>15 witness all five of those witnesses were could not</p> <p>16 /SES tent with Li firm with the minimal use of</p> <p>17 chemicals at Angel Valley and absolutely no we'd</p> <p>18 killer, absolutely no pesticide was ever sprayed at</p> <p>19 that ^ sight ^ site ^ cite where that sweat lodge</p> <p>20 tent was constructed You learned that ^ there</p> <p>21 in ^ therein fact is a landscape cloth under that</p> <p>22 area to keep the weeds down and you learned that</p> <p>23 sand has been brought in every few years to core</p> <p>24 the area Cover There is simply no evidence</p> <p>25 ladies and gentlemen of organo-phosphates, that</p>	<p>55</p> <p>1 and felt like she was going to die And that when</p> <p>2 she got out remember how she told you she felt</p> <p>3 like all of her dreams were not going to come true</p> <p>4 Now, this is a photograph from 2008, as the defense</p> <p>5 told you It's the lady named Hermia Now 2007</p> <p>6 she was a participant in 2008 in this photograph</p> <p>7 she's now a Dream Team member Witnesses have</p> <p>8 testified that in 2007 she was the participant who</p> <p>9 was carried out unconscious, unresponsive and taken</p> <p>10 up to the rooms where she was immediately cooled</p> <p>11 But again, this is where looking at what happened</p> <p>12 At Mr Ray's prior sweat lodges is so relevant to</p> <p>13 this issue of causation The defense wants you to</p> <p>14 believe organo-phosphates caused the death and</p> <p>15 forget the following that people get sick in that</p> <p>16 hot tent at Angel Valley only when it is Mr Ray</p> <p>17 facilitating or conducting his sweat lodge</p> <p>18 ceremony It doesn't matter if it's the same</p> <p>19 structure as it was in 2008, or a different</p> <p>20 structure as it was in 2007 It's the extreme</p> <p>21 nature of the defendants ceremony that caused</p> <p>22 people to get sick and that caused the people to do</p> <p>23 I in 2009 The testimony was that when others /TPA</p> <p>24 still state sweat lodge ceremony at Angel Valley, no</p> <p>25 one gets sick And that in between the heat events</p>
<p>54</p> <p>1 some how rat /POEUS /OPBS caused these deaths or</p> <p>2 that some other police /TER /KWRUS toxin from the</p> <p>3 wood or some other source is to blame for the</p> <p>4 deaths in this case What are we left with We</p> <p>5 are left with what is nght in front of everybody's</p> <p>6 ice eyes that sweat lodge with intense and /SAERG</p> <p>7 heat and steam the environment where the three</p> <p>8 ^ patience ^ patients were found, where they spent</p> <p>9 two hours before they collapsed and they died</p> <p>10 Now in helping you decide whether it was /PR</p> <p>11 ^ raise ^ race conduct, his extreme heat event that</p> <p>12 caused the death of the victims you can look at</p> <p>13 what happened in prior years at Angel Valley when</p> <p>14 Mr Ray was conducting his prior events Jennifer</p> <p>15 /HAEUL the Dream Team hair dresser from 2009</p> <p>16 testified that she was a participant at Mr Ray's</p> <p>17 events in 2007 and Jennifer told you that Mr Ray</p> <p>18 was her mentor and her teach /SKPER that she</p> <p>19 believed he knew something she didn't and she was</p> <p>20 committed to finding out Jennifer told you that</p> <p>21 she believed because of Mr Ray's teachings and</p> <p>22 because she had paid that \$10,000 that she needed</p> <p>23 to endure the heat in that sweat lodge in 2007 for</p> <p>24 her dreams to come true and in 2007, Jennifer</p> <p>25 stayed in the tent, she told you for four rounds</p>	<p>56</p> <p>1 of Mr Ray of 2008 and 2009, others had conducted</p> <p>2 sweat lodge ceremony at Angel Valley lying in that</p> <p>3 same dirt, in that same structure with the same</p> <p>4 coverings and no one got sick And that in between</p> <p>5 Mr Ray's heat events of 2007 and 2008, other</p> <p>6 ceremony were conducted at the</p> <p>7 ^ sight ^ site ^ cite Again lying in that same</p> <p>8 dirt, this time in a different structure with</p> <p>9 similar coverings When other people do it no one</p> <p>10 gets sick When Mr Ray does it people get sick</p> <p>11 You can consider that information in deciding</p> <p>12 whether it's some mystenous toxin or it's</p> <p>13 Mr Ray's conduct His extreme event that caused</p> <p>14 the victims to die Debby Mercer testified she was</p> <p>15 there in 2007 for Mr Ray's Spiritual Warrior event</p> <p>16 and his sweat lodge She told you that she was</p> <p>17 alarmed, that she had never seen people put in this</p> <p>18 kind of condition before Debby told you she saw</p> <p>19 vomiting She saw eyes rolled in the back of heads</p> <p>20 and that she saw people unconscious Debby told</p> <p>21 you in 2007 she assisted 20 participants that a</p> <p>22 woman came out, had trouble, fell on her phase and</p> <p>23 you remember /KEB Debby remembering the ladies</p> <p>24 pretty blue eyes /TPHRUT /TERG and her face was</p> <p>25 scraped up after she fell Debby testified how she</p>

<p>57</p> <p>1 and a Dream Team member in 2007 were with one</p> <p>2 unresponsive lady for 20 minutes And Debby</p> <p>3 testified about 2008, and again, Debby told you</p> <p>4 that she saw vomiting eyes rolled back in the</p> <p>5 head unconscious people Debby told you that she</p> <p>6 assisted 12 people in 2008 who needed help just to</p> <p>7 get out Debby told you how a man came out yelling</p> <p>8 that he had to save his girl /STKPREPBD Debby told</p> <p>9 you about Hemia could not /SRULTD /-G off and on</p> <p>10 And finally Debby told you about a third woman</p> <p>11 in 2008 who was /EPB coherent Now Linda Andresano</p> <p>12 the nurse from Tucson Debby and Ted Mercer and</p> <p>13 Fawn Foster all testified about other sweat lodge</p> <p>14 ceremony that they had ^ do not ^ done and how</p> <p>15 extreme Mr Ray's conduct was in comparison to the</p> <p>16 careful behavior of other facilitators They</p> <p>17 testified how other others do four rounds use far</p> <p>18 fewer rocks gently ladle the water on the hot</p> <p>19 rocks</p> <p>20 MR LI Your Honor may I approach</p> <p>21 THE COURT Yes</p> <p>22 MR LI Your Honor, this is pour port /-G to</p> <p>23 establish some sort of standard of conduct never</p> <p>24 adduced at tnai The court ruled does not exist</p> <p>25 this argument is improper</p>	<p>59</p> <p>1 That's inter Conducts right now /-PLT define as</p> <p>2 criminal behavior the /APBGT of oh or oh mission</p> <p>3 We've gone through that There can be discussions</p> <p>4 in terms of causation Ms Polk and no issue now</p> <p>5 it's getting on the suggestion some how there is</p> <p>6 some other standard out thereof how to properly</p> <p>7 conduct a sweat lodge That's all I can say It's</p> <p>8 a dangerous area for the whole case Go ahead</p> <p>9 MS POLK You know what let me make the</p> <p>10 record this is the issue of causation It's the</p> <p>11 defendants extreme conduct that causes people to</p> <p>12 get sick And that is the point I'm making is that</p> <p>13 his sweat lodge are extreme I'm basing it on</p> <p>14 testimony that came in trial Not talking about</p> <p>15 any sorts of reasonable-person standard I'm</p> <p>16 talking about it is how he does it and that his is</p> <p>17 extreme compared to how the</p> <p>18 THE COURT You made that point already that</p> <p>19 other people don't get sick It's this close point</p> <p>20 we've gone through all the way through Ms Polk and</p> <p>21 that's all I can say There just cannot be</p> <p>22 comparison to a standard that does not exist It</p> <p>23 is it was admitted for purposes of causation If</p> <p>24 it stays strictly to that Stays within the</p> <p>25 confines of the evidence too that in fact there was</p>
<p>58</p> <p>1 MS POLK This goes to the issue of</p> <p>2 causation Companson of the of what happens with</p> <p>3 other sweat lodge ceremony and that same structure</p> <p>4 THE COURT I don't have any issue with it</p> <p>5 until now It's inviting again saying /THR-Z no</p> <p>6 dispute Mr Ray talks about how his is absolutely</p> <p>7 different The companson of causation can be made</p> <p>8 but suggesting there was a some kind of standard</p> <p>9 with different sweat lodges I didn't make a</p> <p>10 specific ruling on</p> <p>11 MS POLK Your Honor, I'm specifically</p> <p>12 talking about causation I'm not talking about any</p> <p>13 sort of reasonable standard I'm showing the jury</p> <p>14 is that it's Mr Ray's extreme conduct that caused</p> <p>15 /-TD deaths That's the causation issue This is</p> <p>16 all testimony that came in at trial</p> <p>17 THE COURT It once again it's the purpose</p> <p>18 And there were some compansons made There were</p> <p>19 similar materials all those things can come in if</p> <p>20 they're accurately portrayed but any suggestion</p> <p>21 that there is some how some right standard they</p> <p>22 should only do four rounds something like that</p> <p>23 And then saying in terms of conduct causing</p> <p>24 conducts has a specific definition of the</p> <p>25 instructions that talk about criminal behavior</p>	<p>60</p> <p>1 not an identity between materials if it's</p> <p>2 accurately represented it's permissible Thank</p> <p>3 you Ends bench</p> <p>4 THE COURT Ms Polk when you're ready</p> <p>5 MS POLK Thank you, Your Honor Many</p> <p>6 ^ waits ^ weights have witnesses have testified in</p> <p>7 this court about the extreme nature of Mr Ray's</p> <p>8 sweat lodge ceremony It is the ultimate heat</p> <p>9 challenge This /A bomb nation of a sweat lodge</p> <p>10 ceremony, extreme nature of Mr Ray's conduct, the</p> <p>11 extreme heat and the extreme humidity that caused</p> <p>12 people to get sick And finally, caused the deaths</p> <p>13 of three people And not some random patches of</p> <p>14 the pesticides There has been several all county</p> <p>15 jail them attacks on the state and I'm going to</p> <p>16 address just a few of them</p> <p>17 First, I never thought I would find</p> <p>18 myself having to defend the fact that I'm a working</p> <p>19 county attorney So I'm just going to leave that</p> <p>20 one alone</p> <p>21 Second, I want to talk about this meeting</p> <p>22 in December of 2009 at the county attorney's office</p> <p>23 with the medical examiners Mr Li made several</p> <p>24 references to this so called secret meeting what</p> <p>25 you learned at trial is that there was a charging</p>

<p>61</p> <p>1 meeting at the county attorney's office and that</p> <p>2 such meetings are not unusual as the prosecutors</p> <p>3 and the detectives review cases Our belief that</p> <p>4 the defense attorneys were not entitled to the</p> <p>5 details</p> <p>6 MR LI Objection Your Honor</p> <p>7 MR LI Your Honor</p> <p>8 MS POLK Was addressed by there point</p> <p>9 THE COURT Counsel approach please Li may I</p> <p>10 state my objection</p> <p>11 THE COURT You know, this is unusual</p> <p>12 situations Ms Polk and Mr Li Mr Li go ahead</p> <p>13 and articulate</p> <p>14 MR LI The counsel at the attorney is what</p> <p>15 she beliefs her purposes were which is not</p> <p>16 permissible She is talking about actual facts our</p> <p>17 belief was /ETSZ That's not permissible</p> <p>18 Secondly, this was the subject of a ruling in which</p> <p>19 the court did grant a /SAFRPGS /-Z, so whatever</p> <p>20 position the state actually had this court found</p> <p>21 was incorrect And granted sanction</p> <p>22 ^ <Delete Space>s and ^ <Delete Space>es and also,</p> <p>23 permitted the additional questioning of these /EZ</p> <p>24 witnesses the fact of the matter this court</p> <p>25 explicitly found was not protected by the work</p>	<p>63</p> <p>1 through Detective Diskin there court addressed it</p> <p>2 That you ordered that they got to talk to the</p> <p>3 witnesses and that's what happened</p> <p>4 THE COURT I believe that was the testimony</p> <p>5 essentially</p> <p>6 MR LI It's misleading to leave it at that</p> <p>7 This court also granted /SAFRPGS /-Z because the</p> <p>8 counsel toy attorney took a bad faith position If</p> <p>9 you want to talk If you want to pretend it didn't</p> <p>10 happen like that they can</p> <p>11 THE COURT /TKP it's going to come through</p> <p>12 the the /TK*EFT ordered that there be oh follow-up</p> <p>13 interviews</p> <p>14 MR KELLY Just to clarify Detective</p> <p>15 Diskin's testimony I did the cross-examination</p> <p>16 When I went down this path, Ms Polk objected and</p> <p>17 it was sustained I was not ^ aloud ^ allowed to</p> <p>18 tell this jury that the government was sanctioned</p> <p>19 THE COURT I think it came out It actually</p> <p>20 did come out But it was not -- we're not going to</p> <p>21 get into the /SAFRPGS /-Z It can be admitted the</p> <p>22 chronology of what happened that came in through</p> <p>23 Detective Diskin can be admitted This whole idea</p> <p>24 of the court /TKPWETD /-G involved I know the</p> <p>25 defense wanted an instruction regarding Brady and I</p>
<p>62</p> <p>1 production The whatever arguments the state wants</p> <p>2 to make they cannot make</p> <p>3 MS POLK Your Honor, these constant</p> <p>4 interruptions are totally inappropriate Detective</p> <p>5 Diskin testified and what I'm going to say right</p> <p>6 now is that our belief his attorneys were not</p> <p>7 entitled to learn about this meeting was addressed</p> <p>8 in this court and that /KAEBG out in the testimony</p> <p>9 of Detective Diskin and that this court ruled and</p> <p>10 that we moved /SKPOPB that's defense attorneys got</p> <p>11 to interview the witnesses That's all in front of</p> <p>12 jury</p> <p>13 MR LI We should get a jury instruction the</p> <p>14 court ordered that our attorneys fees be paid</p> <p>15 MS POLK This all came out</p> <p>16 MR LI That the county attorney positions</p> <p>17 that the county attorney took that were improper</p> <p>18 THE COURT Some reason what Detective Diskin</p> <p>19 testified to that's permissible The problem is</p> <p>20 talking about a belief that's not per the evidence</p> <p>21 You haven't testified Ms Polk</p> <p>22 MS POLK The position that the defense</p> <p>23 attorneys were not entitled to /TPAOEUPBLD out</p> <p>24 about the meeting was addressed by there court</p> <p>25 That's what I'm trying to say And that came outs</p>	<p>64</p> <p>1 stayed away from that That's a question for</p> <p>2 different type of -- And that's setting it just</p> <p>3 stay with the facts Just with the companson</p> <p>4 before As long as the facts are there and stated</p> <p>5 it's okay But implying these things standards are</p> <p>6 something like that That's the problem</p> <p>7 MS POLK What I'm going to say our position</p> <p>8 was addressed by the court The court issued a</p> <p>9 ruling and the witness were interviewed and that</p> <p>10 all all cage /TOUTD through debts testimony that's</p> <p>11 clear there has been some secret netting the jury</p> <p>12 doesn't get to hear</p> <p>13 THE COURT That's the testimony that's what's</p> <p>14 permissible</p> <p>15 MR KELLY In addition to improperly stating</p> <p>16 the /TPEBGT it's improper for the /PROS cue to</p> <p>17 misstate the law The law the government was</p> <p>18 sanction /S-D including attorneys fees Any</p> <p>19 attempt to explain that away because you had /SUS</p> <p>20 stained my later objection ^ Miss ^ miss leads this</p> <p>21 jury Because it's not the truth</p> <p>22 MS POLK I'm going to ask that counsel I</p> <p>23 /TK-PBTD interrupt Mr Li many things were said</p> <p>24 that I thought were mess leading /EUPL not</p> <p>25 profession constantly interrupting me</p>

<p style="text-align: right;">65</p> <p>1 THE COURT It's starting out it's ending up 2 with as toe opening situation I've never been 3 exposed to whatsoever 4 MR LI Just never had a prosecutor /WA talk 5 about what her belief was I have to object 6 THE COURT You understand 7 MS POLK I'm going to say the position 8 I'll correct that 9 MR KELLY Your Honor with all due respect 10 Our big concern is can waiver We believe there 11 has been some -- I've been keeping track some 12 significant problems that puts us in an 13 uncomfortable position whether to object during his 14 /POEBGZ closing or request a sidebar To the ex 15 extent that we can preserve all our objections for 16 subsequent discussion we'd make that motion But 17 you had repeatedly cautioned us throughout the 18 course of the trial you would not do that 19 THE COURT They're going to be preserved We 20 can get to a point where it gets beyond arguments 21 improper, to improper arguments going beyond the 22 facts and if that's I'm trying to have the trial 23 proceed in a fair manner And I've made these 24 rulings It just needs to stick to the evidence 25 And I recall the defense saying in this context had</p>	<p style="text-align: right;">67</p> <p>1 labs That's what reports are for, reports are how 2 the professionals communicate Mr Li said many 3 times that Detective Diskin never communicated with 4 Dawn Sy and as you heard from Detective Diskin, 5 that was true, but Detective Diskin communicated as 6 he told you with Dawn Sy's supervisor You also 7 learned from Dawn Sy that her supervisor 8 communicated with the medical examiner Mr Li 9 made hey of the fact that the state did not call 10 Dawn Sy as a witness and yet you learned that we 11 had her here ready to testify but ran out of time 12 Meanwhile her work, that lab report and all those 13 lab notes were admitted, again, that's what the lab 14 reports and notes do They are the communication 15 between the professionals The defense did call 16 her but was there anything in her testimony that 17 the state wanted to hide? No In fact she 18 testified that when asked on examination by the 19 defense when asked about were the state should have 20 preserved the entire sweat lodge in intact for 21 testimony /-G she testing she stated no Her 22 testimony was that she saw no evidentiary value in 23 pre serving that entire sweat lodge she further 24 testified that the soil samples that were collected 25 in this case were adequately representative of what</p>
<p style="text-align: right;">66</p> <p>1 to do with not answering questions or something was 2 actually the factual what was facts And what 3 Detective Diskin said wasn't objected to If it 4 was objected to if I overruled it that evidence 5 with regard to what Detective Diskin testified to 6 that's permissible That's it Thank you 7 THE COURT /PHEUSZ poke 8 MS POLK Back to the secret meeting As you 9 haired through the testimony of Detective Diskin 10 the issue of whether or not the defense attorneys 11 were entitled to the details of that charging 12 meeting was addressed by the court The court 13 issued a ruling, and the witnesses were then made 14 available for the defense attorneys to interview 15 What you learned at trial in fact as the witnesses 16 were interviewed bit defense and so any suggestion 17 that some how there is information in this case 18 that the defense was not able to get /TPWR-T state 19 would be false Mr Li /KPHRAEUPBZ because our 20 meeting was apparently not big enough Where were 21 the E R doctors, the physicians from the hospital, 22 where was Dawn Sy Why did I not ^ pick 23 up ^ pickup the phone and invite them all to this 24 meeting Real life is not like CSI on TV with cops 25 and prosecutors having free access to the crime</p>	<p style="text-align: right;">68</p> <p>1 were in the sweat lodge I'm going to address head 2 on with you the suggestion that's state some how 3 destroyed evidence that had evidentiary value 4 Mr Li is exactly right The defendant and the 5 defense has no obligation whatsoever to produce 6 evidence or to test any evidence What you have 7 heard from Dawn Sy the DPS /KREL ^ list ^ lift and 8 Detective Diskin and from the medical examiners and 9 you have seen with your own eyes that all the 10 samples in evidence that was seized in this case 11 has been preserved and is available and has always 12 been available for testing by either party Cedar 13 logs used to heat the rocks, the rocks themselves, 14 the up right poles in the sweat lodge, samples of 15 the covering Samples /-FLT soil, samples of the 16 water, the electrolytes and lemon water at the 17 scene and samples from the three victims all was 18 preserved Again, Mr Ray has no obligation to 19 produce any evidence, but it would be completely 20 false for anyone to suggest to you that items of 21 evidentiary value were destroyed Mr Li talked to 22 you about the conversation that Detective Diskin 23 Barbaro Detective Barbaro had with the defendant 24 at the scene And suggested to you that sergeants 25 Barbaro was confused As you will recall sergeant</p>

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1 Bararo testified about two conversations, the
2 first one that he had alone with Mr Ray and then
3 there was a second conversation where lieutenant
4 Parkison had then joined them Sergeant Bararo in
5 no uncertain terms told you he was clear when he
6 asked Mr Ray who was running the sweat lodge
7 Mr Ray replied what? Ted, the fire tender did it
8 I want to review with you the testimony of doctor
9 Beverly Bunn
10 THE WITNESS You will recall she's the
11 dentist from house son This was her second paid
12 event with Mr Ray She /WRAS not a /KULTS member
13 nor did you ever hear the state talk about /KULTS
14 or say this /W-S a cult or call anybody a cult
15 member Mr Li did in his opening The defense
16 attorneys in cross-examination /-G witnesses and
17 Mr Li did again in his closing But you never
18 heard the state talk about /KULTS This is not a
19 case about /KULTS This is a case about a man
20 James Ray, who markets /-D himself as a qualified
21 professional, who charged \$10 000 for a five day
22 event, not including room and board and then
23 recklessly caused the deaths of the participants
24 who trusted he knew what he was doing And who
25 reasonably relied on him to keep them safe You

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1 learned from Dr Bunn that after she shared a
2 comment on ^ Sunday ^ sun at the open Mike that
3 Mr Work with him all week and that she did
4 Dr Bunn told you how the Samurai Game lasted seven
5 hours and that when they were ^ do not ^ done
6 Mr Ray told them he was appalled, that he had
7 never seen the game played so poorly and they were
8 all so worried about dying that they forgot to
9 live On Thursday morning about three hours before
10 the participants entered that super heated tent
11 they were all told by Mr Ray to write their oh bit
12 /REUS Dr Bunn told you she struggled all week
13 over whether to shave her head finally did so one
14 hour before that sweat lodge began In her words
15 shaving her head was part of playing full on And
16 she did not want to be perceived as a person who
17 was not participating Dr Bunn testified that
18 Mr Ray had told her and everyone to get the most
19 out of everything he had in mind for them for the
20 week They needed to play full on And so after
21 struggling with it all week long finally one hour
22 before entering the sweat lodge Dr Bunn had her
23 head shaved Inside the sweat lodge for the first
24 round according to Dr Bunn 12 super heated rocks
25 came in Rocks that were /A according to Ted

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1 Mercer the hottest rocks he had ever made And you
2 will recall Mr Mercer's testimony that he was
3 called to the circle around the intentions fire and
4 that Mr Ray told everybody these are the hottest
5 rocks ever According to Dr Bunn that first
6 round lasted 20 to 25 minutes And Dr Bunn
7 described for you the rocks as being /TKPWHROEG hot
8 red when they came into the tent Dr Bunn told
9 you how Mr Ray dumped the buckets of water on the
10 rocks at the beginning of each new round
11 approaching the back area of the sweat lodge each
12 time Expenencing each time arguably how much
13 hotter it was near the pit and near the back of the
14 tent nonetheless as you have heard from all the
15 witnesses Mr Ray continued round by round to build
16 the heat in that tent Dr Bunn told you having
17 been told by Mr Ray not to speak how no one spoke
18 in the first few rounds And she described for you
19 the heat How she could feel the heat from the
20 steam like it was fire How it was too intense,
21 too hot how she could not even sit up She laid
22 down on her back but how the heat /WOS so intense
23 she had ^ list ^ lift her leg in the air to get
24 them away from the pit How swell /TERG humid and
25 /SU to /KAEUT /-G it was And how there was no

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1 relief She testified how hard it was to swallow
2 or breath How crowded it was How much she was
3 sweating, how she stopped the chanting and just
4 tried to breath And how she laid with her head
5 two feet from the extenor wall and still felt no
6 air at all She testified how there was a dramatic
7 difference between the air at the top of the tent,
8 and at the bottom of the tent And how much hotter
9 at the top of the tent it was where you could not
10 breath at all And that's why she had to lie down
11 Dr Bunn testified how by round three she was
12 struggling And how she tried to sit up but was
13 too dizzy She testified how Mr Ray kept yelling
14 out in that powerful voice you're more than that
15 You can endure this you can do this By the ends
16 of rounds three Dr Bunn told you, she had decided
17 she had had enough and she was going to stay just
18 one more round and again /P then get out She
19 testified how at the end of round for she sat up to
20 crawl out, they felt so dizzy she wasn't sure she
21 could make it out and as she called toward the door
22 to get out in the short time that door was open,
23 Mr Ray said to her Beverly, especially you are
24 stronger than this you know you can do this You
25 can endure this You will remember how Dr Bunn

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1 testified as several witnesses did that she thought
 2 well obviously Mr Ray nose better than I do he's
 3 ^ do not ^ done this before She told you how
 4 because she had been working with Mr Ray all week
 5 she did not want to let him down She said she was
 6 at the events to work on personal he shall use on
 7 her life That she needed to work on them And
 8 they thought that Mr Ray knew more than she did
 9 what she needed to do and so Dr Bunn, instead of
 10 getting outs of thereafter that fourth round kept
 11 crawling and found a spot at the 9 00 o'clock
 12 position According to Dr Bunn in this position
 13 she was able to get some air every time the door
 14 opened From this new position Dr Bunn managed to
 15 stay in the tent for the entire event You heard
 16 testimony from many witnesses such as Brandy rainy
 17 about the growing chaos and distress outside the
 18 sweat lodge About Lou and Dennis Both
 19 projectile vomiting About Amy Gimes being
 20 brought out unconscious And meanwhile inside the
 21 sweat lodge Dr Bunn described for you how the
 22 conditions grew worse How people deteriorated and
 23 collapsed How Mr Ray, the defendant knew about
 24 it yet ordered that people be left where they were
 25 until his event was over Dr Bunn told you how

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1 the defendant repeatedly egg /HORT /-D the
 2 participants that this was mind over matter
 3 THE WITNESS You are stronger than this and
 4 you are more than your body You're stronger than
 5 this you're stronger than your body she testified
 6 According to Dr Bunn not ^ ones ^ once, not ever
 7 did Mr Ray encourage anyone to leave who was not
 8 feeling well To the contrary and consistent with
 9 what he had told the participants prior to the
 10 events It was an event to push through in order
 11 to in order to have a break through Dr Bunn
 12 testified about how a man named Carlos tried to get
 13 out He was staggering and crawling they had to
 14 grab him so he didn't fall in the pit This
 15 happened right in front of Mr Ray /-RPBLS and
 16 Dr Bunn told you how much it scared her She
 17 talked about Lou falling into the pit and burning
 18 his arm She /TAUGD about how participants were
 19 dragged out unconscious right in front of Mr Ray
 20 who did nothing ^ accept ^ except continue his
 21 event Dr Bunn told you that someone crawled out
 22 the back of the tent and that Mr Ray was an /TKREU
 23 and /TKPWRET out that was sacrilegious you could
 24 only leave out through the door You heard
 25 testimony from Brandy rainy came outs after the

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1 fifth round she /KAU Mr Ray come out first when he
 2 finally ended his events Sweating and looking
 3 fine and how he turned to his assist /TAPBT tailor
 4 Butler and asked what do you think about the sweat
 5 lodge And how tailor answered nobody does a sweat
 6 lodge like you James And then Brandy testified
 7 how Mr Ray got /HOESZ /-D off got some /WAT /ERBGS
 8 and sat in a chair in the shade, leaving the Dream
 9 Team members, the Mercers and other participants to
 10 deal with the sick and the dying Dr Bunn told
 11 you when it was over she helped push out an
 12 unconscious woman And that while Dawn Gordon says
 13 she did not here any sounds from Kirby Brown as
 14 dawn crawled out Dr Bunn testified that when she
 15 passed Kirby Kirby was still making that snorting
 16 gurgling round sound According to Melinda Martin
 17 the employee who performed the rescue /PWRAEGTD /-G
 18 on Kirby Brown she was still making those sounds
 19 when she was doing the rescue breathing According
 20 to Debby Mercer 15 minutes before everyone had
 21 cleared out And Debby looked inside and saw the
 22 three people still there And during those 15
 23 minutes, where was Mr Ray He was outside sitting
 24 in the shade, drinking his water You /HRAERD
 25 testimony, medical testimony about how time is of

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1 the essence to remove an also patient from the also
 2 and how medical personnel have a chance of
 3 restoring a heart to a person ^ who is ^ whose
 4 heart still has a shock able /REUGTS /UPL much when
 5 you consider whether Mr Ray's conduct was a gross
 6 deviation from the conduct of a reasonable person
 7 in that situation ask yourselves whether a
 8 reasonable person who has been told that people are
 9 unconscious and in trouble and not breathing leaves
 10 them there not only for two more rounds, but /WH-TS
 11 /SAQEPBT over for another 15 minutes while he
 12 himself cools off and high /TKRAEUTS We will
 13 never know whether those additional 15 minutes that
 14 Kirby and James laid still inside the sweat lodge
 15 while Mr Ray cooled himself in the shade would
 16 have made a difference to life or death But you
 17 do know ladies and gentlemen that Mr Ray's conduct
 18 was not the can you go to the of a reasonable
 19 person in that situation And when you consider
 20 the question of whether Mr Ray was aware of and
 21 consciously disregarded the risk of death created
 22 by his conduct, ask /WRUR selves why he was not
 23 alarmed at what everyone else describes as chaos
 24 car /TPHAS and a car /TPHAPBLG and a mass /SAOUS
 25 ^ sight ^ site ^ cite The reason Mr Ray was not

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1 alarmed /EP even after the events sitting in the
2 shade surveying the /SAEUGS Even while learn that
3 three people were still down inside the sweat lodge
4 inside the tents Everything that was happening
5 was what he intended to happen Everything was
6 happening, everything that was happening is what he
7 expected to happen ^ Accept ^ Except for death
8 Mr Ray intentionally used heat to cause these he
9 can /TRAOEPL altered mental status changes in his
10 participants And that's why after the event he
11 comes out he sits down in the shade you heard how
12 other witnesses reacted, are taking care of people
13 and Mr Ray is just sitting there That's because
14 everything that happened was what he intends today
15 happen ^ Accept ^ Except for death Sitting in
16 his chair in the shade what would Mr Ray have
17 seen According to Dr Bunn Sidney Spencer was
18 laying there barely breath Making that slight
19 checking /SWOUPBD her breath /KRES teen was
20 flailing screaming James Ray Another woman lay
21 there unconscious with an arm that had turned blue
22 according oh Dr Bunn from lack of circulation
23 Stephen Ray was also unconscious, his eyes rolled
24 back in his head and according to Dr Bunn the
25 blood vessels burst with pupils dilated And

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1 culpable mental state of the person using the
2 weapon that determines the crime When a person as
3 a result of another persons criminal conduct dies,
4 there are different levels of homicide that could
5 possibly have occurred In /REBG rest manslaughter
6 is a charm that is meant to prevent people from
7 recklessly engaging in conduct they know can cause
8 death exactly what happened here And when a
9 person doesn't know or fails to perceive the risk
10 that their conduct will cause death, then their
11 failure to perceive and their failure to perceive
12 is a gross deviation from the standard of conduct
13 of a reasonable person then you have the lesser
14 /KWRUS offense of negligent homicide In both
15 instances what we have to prove is that Mr Ray's
16 conduct created the risk of death Not that
17 Mr Ray knew that people were dying
18 Mr Li argued to you that Mr Ray could
19 not have known that people were dying because he
20 claims no one knew In fact, as you have seen in
21 this case by listening to all of the witnesses,
22 many people did know that something was wrong and
23 that people why in trouble Many people did call
24 out to Mr Ray, the master of the lodge as he
25 called himself for help and guidance and when they

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1 Brandy rainy who came out after the fifth round
2 /SKRAOEUBGDZ for you how Tess Wong was brought out
3 and was laying on the tarp making horrible sounds
4 having what looked like a seizure to /PHAEUS rainy
5 Ms Rainey told you that the defendant sitting less
6 than three feet away Simply asked who was making
7 that noise Mr Li incorrectly told you in his
8 closing arguments that the state has to prove that
9 Mr Ray knew that people were dying We do not
10 It's in your jury instructions We do not have to
11 prove that Mr Ray knew people were dying What we
12 have to prove is that Mr Ray was aware of and
13 consciously disregarded a substantial and
14 unjustifiable risk that his conduct would cause
15 death Awareness that your conduct will cause
16 death is different from knowing that people are
17 actually dying For reckless manslaughter you must
18 find beyond a reasonable doubt that Mr Ray was
19 aware of and consciously disregarded the risk that
20 his conduct would cause death Not that he knew
21 that people were dying Mr Ray told you that
22 manslaughter is for cases where people are shooting
23 off guns or slash /-G with knives It is not the
24 weapon that determines the degree of homicide that
25 a person may or may not have committed It is the

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1 called out to him for help and guidance, he told
2 them to leave unconscious people where they were
3 until the round was over, and he told them that
4 participants with labored breathing such as Liz
5 Neuman and Kirby were fine That's what the crime
6 of manslaughter is about Being aware that your
7 conduct creates a substantial and unjustifiable
8 risk of death which Mr Ray clearly was and
9 consciously disregarding that risk Which Mr Ray
10 clearly did You have learned through all the
11 testimony that after /-TD fifth round Dennis
12 Mehravar passed out When he awoke he believed he
13 was having a heart attack and screamed out I'm
14 dying I'm dying and you learned that Mr Ray did
15 not take heed but simply leaned out of the tent and
16 yelled out Dennis butt buddy you're not going to
17 die Less than an hour later two people were dead
18 The state does not have to prove that Mr Ray or
19 anybody knew that people were dying We do have to
20 prove that Mr Ray was aware of and consciously
21 /TKEUS /RAR /-D the substantial and unjustifiable
22 risk that his conduct would cause death Without
23 question beyond any reasonable doubt the state has
24 proven that Mr Ray was aware that people were
25 unconscious, not bathing and in trouble and that he

<p>81</p> <p>1 consciously disregard /-TD the substantial and</p> <p>2 unjustifiable risk that his conduct would cause</p> <p>3 death. The defense has suggested to you that what</p> <p>4 occurred on October 8 during Mr. Ray's Spiritual</p> <p>5 Warrior event was merely an accident</p> <p>6 Intentionally using heat to create an altered state</p> <p>7 and being reckless about the consequences is not an</p> <p>8 accident. In order to find the defendant guilty of</p> <p>9 manslaughter you must find that his disregard of</p> <p>10 the risk of death created by his conduct was a</p> <p>11 gross deviation from the standard of conduct of a</p> <p>12 reasonable person in that situation. I'm going to</p> <p>13 read to you from page six of your instructions the</p> <p>14 risk must be such that disregarding it was a gross</p> <p>15 deviation from the standard of conduct that a</p> <p>16 reasonable person would observe in the situation.</p> <p>17 The jury instructions tell you that conduct in</p> <p>18 civil cases is in addition /SRER tense or heedless</p> <p>19 necessary. And that criminal conduct is conduct</p> <p>20 which is extreme accident or /TPHRAEUG rant. Out</p> <p>21 /RAEUPL us or heinous or /TKPWRAOEFL us. Heat</p> <p>22 stroke or hyperthermia is a horrific way to die.</p> <p>23 What makes this case so unbearable /PWHEU sad is that</p> <p>24 it was entirely preventable. Death in that sweat</p> <p>25 lodge was entirely preventable. Would three people</p>	<p>83</p> <p>1 reasonable person would have done, would we be</p> <p>2 here. You recall the testimony from Melinda Martin</p> <p>3 when the necessary came out screaming I don't want</p> <p>4 to die and vomiting everywhere how horrified she</p> <p>5 felt and how a Dream Team member told her to get</p> <p>6 that lock of /HOR /ROR off her /HAEUS and Melinda</p> <p>7 Martin who testified about seeing Mr. Ray talk to</p> <p>8 the necessary when the event was over, and Melinda</p> <p>9 Martin told you she saw Mr. Ray give Ken Dennis a</p> <p>10 high five for his near death experience. I'll</p> <p>11 remind you again of Dennis's testimony about what</p> <p>12 Mr. Ray said to him about Dennis's experience.</p> <p>13 Mr. Ray said to Dennis when this was all over, /A</p> <p>14 mid all the chaos witnesses have described to you</p> <p>15 was going around. He said to the necessary, you</p> <p>16 died and you were /RE born. Now go take a shower.</p> <p>17 Again, the state does not quibble with the notion</p> <p>18 that Mr. Ray never intended for people to die.</p> <p>19 That is not what the reckless manslaughter statute</p> <p>20 is about. You don't we don't quibble with the</p> <p>21 notion Mr. Ray use death as a metaphor. When you</p> <p>22 deliberately confuse a metaphor with reality it is</p> <p>23 no longer a metaphor. Where is the metaphor in</p> <p>24 telling participants to push through the pain of</p> <p>25 your body collapsing from heat illness where is</p>
<p>82</p> <p>1 have died if Mr. Ray will acted like a reasonable</p> <p>2 person in that situation. And the standard is not</p> <p>3 a reasonable person, a participant inside that</p> <p>4 sweat lodge ^ who is ^ whose mental status has been</p> <p>5 altered by the heat but the standard is that of a</p> <p>6 reasonable person in Mr. Ray's situation. And so</p> <p>7 ask yourselves how a reasonable person who has</p> <p>8 charged \$10,000 per participant for his event,</p> <p>9 ^ who is ^ whose facilitating that sweat lodge</p> <p>10 ceremony, how would a reasonable person act. If</p> <p>11 Mr. Ray had ^ do not ^ done what a reasonable</p> <p>12 person would have done we would not be here. If</p> <p>13 Mr. Ray had stopped his event when Amy Gimes</p> <p>14 passed out after the fourth /SKPROUPBD was dragged</p> <p>15 out unconscious right past him. Like a reasonable</p> <p>16 person would have done. Would we be here. And</p> <p>17 what if Mr. Ray will stopped when Megan Frednckson</p> <p>18 /HEGS own employee who sat right beside him in the</p> <p>19 sweat lodge in the tent had warned him. James</p> <p>20 these people are your responsibility. What if</p> <p>21 Mr. Ray had stopped the /WHAOEPBT Lou passed out</p> <p>22 and fell into the pit. As a reasonable person</p> <p>23 would have done, would we be here. If Mr. Ray had</p> <p>24 stopped the event when Dennis crawled out passed</p> <p>25 out and came to screaming that he was dying, as a</p>	<p>84</p> <p>1 the metaphor in intentionally using heat to create</p> <p>2 an altered state and telling /PAEURT.</p> <p>3 Participants to ignore your bodies</p> <p>4 warning signs. That is not a metaphor. That is</p> <p>5 criminal recklessness. What if Mr. Ray had stopped</p> <p>6 the event before the 6th round instead of yelling</p> <p>7 at /PHAOEBG /OEL son to leave Chns 10 that alone</p> <p>8 /PWAB /-BLG cling /ER to pouch. What is /#34R when</p> <p>9 /SKWOT /PWA rat around the six round tried to help</p> <p>10 Lynn /TA Andresano collapse against the back of the</p> <p>11 /EPBTS against the /KPWAUL. What if Mr. Ray</p> <p>12 instead of telling ^ Scot ^ Scott just leave her,</p> <p>13 we need to keep ongoing, what if he had stopped</p> <p>14 this event. Would we be here. And what if Mr. Ray</p> <p>15 had stopped his heat endurance challenge at the 6th</p> <p>16 round when James Shore dragged Sidney Spencer life</p> <p>17 less limp and unconscious right past Mr. Ray out of</p> <p>18 the sweat lodge and bumped his head on the /KRAEUPL</p> <p>19 as he went back in. What if Mr. Ray had stopped</p> <p>20 his ceremony his heat endurance challenge then and</p> <p>21 James Shore brought Sidney Spencer out. Would we</p> <p>22 be here. What if around the fifth or 6th round</p> <p>23 Mr. Ray had learned to learn what it was about /U</p> <p>24 Liz Neuman's condition when Laura Tucker, concerns</p> <p>25 enough that she disregarded Mr. Ray's orders not to</p>

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1 talk in the sweat lodge called out James it's
2 Laura I'm concerned about Liz What if instead of
3 announcing for everyone in that tent to hear
4 including Liz, without checking on Liz that Liz has
5 done this before and she knows what she's doing,
6 what if Mr Ray had simply stopped the ceremony and
7 checked up on Liz If Mr Ray had ^ do not ^ done
8 what a reasonable person in that situation would
9 do, ^ check up ^ checkup on his participants when
10 he learns that people are in distress, would three
11 people be dead And if when Melissa Phillips who
12 was /STAET seated at the 2 00 o'clock position
13 called out, /TPAOUF to sick times that Kirby
14 wasn't breathing and needed to be taken out if
15 Mr Ray had simply ^ do not ^ done what any
16 reasonable person would do Stop the /AOEPBTD and
17 tended to that person who wasn't /PWRAEGTD /-G,
18 would we be here You heard testimony about the
19 horrible loud snorting and gurgling sounds that
20 Kirby was making, and you heard testimony from
21 seven witnesses inside the tent who told you they
22 heard calls of concern for Kirby That she was
23 /-PBTD doing well That she was in trouble She
24 was unconscious or she needed to get out You
25 heard testimony that Mr Ray responded to wait

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1 until after the rounds was over Law /REU /SKWREU
2 that /REU Dr Bunn laying in their spots nearing
3 the 9 00 o'clock position testified she heard
4 someone seated at the 2 00 o'clock Where Melissa
5 Phillips is seated call out she's not breathing and
6 both testified they heard Mr Ray respond leave her
7 there we'll deal with her at the ends /-FRT next
8 round And Dr Bunn told you she waited to hear
9 for Mr Ray to do what a reasonable person would
10 do stop, ^ check up ^ checkup on that person ^ who
11 is ^ whose not breathing and take /KAUR of that
12 person And instead you learned that Mr Ray did
13 not Instead you learned that he ordered the flap
14 closed and continued on introducing more heat and
15 more /SAERG steam to that environments In
16 addition to Laura /SKWREU that /REU Dr Bunn and
17 you heard testimony from doctor Neil Wagoner who
18 was seated at the 5 00 o'clock position close to
19 Mr Ray you heard /TPREFT Mark Rock who was seated
20 at the 12 00 o'clock position You heard testimony
21 from Kim Brinkley who was seated at the four to
22 5 00 o'clock position You heard testimony from
23 Dawn Gordon who was seated at the 12 to 1 00
24 position you heard from all of them that they heard
25 calls for help Or called out Or heard calls

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1 that someone needed to /TKPWETD out, and you heard
2 testimony from all of them that Mr Ray said the
3 door is closing wait until the /SROUPBD over Dawn
4 Gordon seated at the 12 to 1 00 position testified
5 how James Shore twice called out for help The
6 first time for Kirby, the second time for both of
7 them saying we need help ^ over here ^ overhear
8 Before that final round began You heard how James
9 Shore desperately tried to get air during that
10 final round by opening up the /PWAFBGT tent and how
11 Mr Ray yelled out turn off that light You heard
12 how James Shore suite Li offered so /HRAS to Kirby,
13 as the two of them finally slipped into death
14 Outside the tent three more witnesses Debby Mercer
15 Sara Mercer and Fawn Foster testified about hearing
16 similar things inside the tent Expressions of
17 /KWERPB about someone who is unconscious not
18 responding Who needed to get out How Mr Ray
19 said wait until the round is over How no one was
20 brought out and how instead more rocks were called
21 for More water And the door was closed and
22 things grew quiet That last round according to
23 witnesses was about 15 minutes 15 more minutes of
24 extreme heat /SAERG steam, no air and no way out
25 With would three people be dead if Mr Ray had

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1 /HABGT /-D as a reasonable person would in that
2 situation And if when this horrific events This
3 horrific heat endurance challenge was finally over
4 would three people be dead if Mr Ray had taken
5 immediate action to save them In considering
6 whether this is an accident, in considering whether
7 Mr Ray's disregard of the risk that is his conduct
8 created, in considering whether that risk it was a
9 gross deviation from the standard of conduct of a
10 reasonable person in that situation, in considering
11 whether his conducts was inadvertent or head less,
12 or was it /TPHRAEUG rant and extreme, consider it
13 from the percent /PEBG /EUFPL of someone who is
14 knew to the organization Melinda ^ March ^ march
15 /-P Someone who is not a student of Mr Ray's
16 Me Lynn /TA as you heard had been hired just for a
17 few short months and unlike some Dream Team members
18 who had been parts of Mr Ray's events in the past
19 She did not know what to expect /TEBGT from that /HAETD
20 event You heard from Melinda she learned of
21 Mr Ray's teachings when she /TAEPB attended the
22 events She had heard him teach that breakthroughs
23 were always the theme and that you have to
24 breakdown in order to have a break through
25 Melinda Martin described to you her growing /HOR

<p>89</p> <p>1 /ROR with this /HAOET event starth first round told 2 by the Dream Team members get the look of /HOR 3 railroad off her face How she /SPRAPBG into 4 action cooling comforting could not /SOELG those in 5 distress and shock Melinda Martin described for 6 you how Mr Ray never stopped Never helped 7 Never came out to see if those people who had left 8 early and who were outside screaming if they were 9 okay Never checked on anyone and how he just kept 10 adding more rocks, more water, more /SAERG heat and 11 more /SAERG steam Are those the actions of a 12 reasonable person in that situation, are those the 13 actions of a man who is criminally reckless 14 Death was not inevitable And this was 15 not an accident Mr Ray had so many opportunities 16 to change the course of his conduct but he did 17 not And that is why we are here, but for 18 Mr Ray's conduct the victims would not be dead 19 Mr Li said it was wrong for me to leave up 20 photographs of these three victims when I did my 21 first closing, we are here because three people 22 died needlessly in Mr Raise /HO homfic heat 23 endurance challenge We are here because /PR Ray 24 /REBG rest Li caused their deaths and yes I am 25 going to remind you of why we are here These</p>	<p>91</p> <p>1 That's what's wrong with this case Mr Ray's 2 conduct in continuing to introduce that lethal heat 3 with three people down and in distress in his sweat 4 lodge We are here ladies and gentlemen because 5 Mr Ray, because of his conduct We are here 6 because Mr Ray intentionally used heat to create 7 this altered mental status and was criminally 8 reckless about the consequences That is what 9 reckless manslaughter is about and I ask you again 10 to find the defendant Mr Ray guilty of all three 11 counts Thank you 12 THE COURT Thank you Ms Polk Ladies and 13 gentlemen, in just a couple minutes we'll be 14 selecting the alternate jurors and for those of you 15 who will be selected as alternates I have some very 16 important instruction I'll say there a couple of 17 times don't go anywhere Don't leave when, if your 18 name is called, you need to stay ^ there 19 to ^ thereto get the instructions and basically the 20 instructions are these, it has to do with 21 continuing the admonition even though you would 22 not start out deliberating with the 12 member jury, 23 it's possible that you may at some point So those 24 of you who are selected as /A alternates 25 Absolutely must follow the admonition all the way</p>
<p>90</p> <p>1 three people looking to improve their lives trusted 2 that for \$10,000 Mr Ray new what he was doing and 3 they /TRUFTD that for \$10,000 Mr Ray would keep 4 himself keep them safe and his /WAETD lodge 5 events These three people lay in is he /KRAOER 6 distress in Mr Raise /SW*L while others around 7 them tried to do what they could do to help While 8 others around them called out to Mr Ray, that they 9 needed help, they needed to get out These three 10 people lay in Mr Ray's sweat lodge dying while he 11 continued to administrator rocks, more water and 12 more steam /Z /THRAOEZ /THAOE people are the 13 reason we're here, because but for Mr Ray's 14 conduct these three individuals Kirby Brown, James 15 Shore, and Liz Neuman would still be alive What's 16 wrong in this case is charging \$10,000, telling 17 participants you know what you're doing, telling 18 participants to trust you and to set aside their 19 own self preservation incident /STEUBGTS and then 20 recklessly incredibly recklessly holding that 21 ultimate challenge this heat events and in spite of 22 information that people are in distress 23 unconscious, not /WRAEGT breathing, need to get 24 out Continuing to act Continuing to create more 25 of that /SAERG heat and more of that /SAERG steam</p>	<p>92</p> <p>1 through until you hear from this office, from my 2 office otherwise You have to follow the 3 admonition until you actually hear there is a 4 result in the case So remember to stay there, at 5 this time I'm going to ask if the attorneys would 6 like to inspect the draw box Ms Polk 7 MS POLK No, Your Honor, thank you 8 MR LI No, Your Honor 9 THE COURT Okay Then at this time I'm going 10 to ask the clerk to please select three alternates 11 Of course one at a time Please remember just 12 the number 13 THE CLERK Juror 14 ^ No <Sticky Space>2 ^ number 2 Your or 15 ^ No <Sticky Space>8 ^ number 8 Juror No 7 16 THE COURT Jurors 17 ^ No <Sticky Space>2 ^ number 2 seven and eight, 18 your names have been selected As the alternates 19 While you are physically /SKAOUSZ /D from your 20 services as a juror at this time, there remains a 21 possibility you may be called back to court to 22 deliberate some one of the other jurors be unable 23 to do so The bailiff will retain your notes and 24 notebooks for your use if you're called back The 25 admonition continues to apply to you That's what</p>

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1 I've been stressing all aspects of it. You have to
 2 continue to follow the admonition in all respects.
 3 Please do not discuss this case with anyone or let
 4 anyone talk to you about it until someone from my
 5 office note identifies you a verdict has been
 6 reached. At this time I would want to swear in
 7 both Ms. Rybar and ^ Miss ^ Miss Troxell as
 8 /PWHREUFZ. And ladies and gentlemen in a moment I
 9 will be reading to you the closing instruction that
 10 will comply at this time. Miss approximate
 11 Troxell I'm asking that the clerks swear in both
 12 ^ Miss ^ Miss /TROBGS /EPL and Ms. Rybar as
 13 /PWHREUFZ in this matter. (Bailiff Rybar and
 14 Troxell sworn in.)
 15 THE COURT: Ladies and gentlemen then you will
 16 go to the jury room and /TKHREUB /RAEUFPLT you will
 17 /TAOEUBG your notes and notebooks with you. I'm
 18 going on to read that closing. The case is now
 19 submitted to you for decision. You are to discuss
 20 the case and deliberate only when all jurors are
 21 together in the jury room. You are not to discuss
 22 the case with each other or anyone else during
 23 breaks or recesses, the admonition I have given you
 24 during the trial remains in effect when all of you
 25 are not in the jury room deliberating. After

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1 I'm /SPAEPBG /-G to the alternate. All of you
 2 whether you're outside deliberations this would
 3 apply to the 12 member jury, the admonition tons
 4 apply in all respect. For the alternates though
 5 remember can't talk among yourselves at all.
 6 That's the alternates. And at this time then we
 7 will be in recess. And the jurors now may go and
 8 deliberate at this time. Thank you.
 9 THE COURT: Counsel, just ask that you make
 10 sure you have your cell phone numbers with the
 11 bailiff, Diane and Heidi so we'll be in recess.
 12 Thank you.

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1 setting your schedule. I suggest that you next
 2 review the written jury instructions and verdict
 3 forms. It may be helpful for you to discuss the
 4 instructions and verdict forms to make sure that
 5 you understand them again during your deliberations.
 6 You must follow the instructions and refer to them
 7 to answer any questions about applicable law,
 8 procedure and definitions. Of course you remember
 9 your instructions, there is that substitute page
 10 for the amended page /AEUFPLT. I want to make sure
 11 all of you have correct sets of jury instructions
 12 when you're deliberating as well. I'll remind you
 13 as I did state /PWH I initially read the /EPB
 14 /STRUBGS all 12 of you must agree on a verdict.
 15 /-PLT all 12 of you must agree whether the verdict
 16 is guilty or not guilty. When you go to the jury
 17 room, you will choose a foreman who will be in
 18 charge during your deliberations and whether sign
 19 any verdict form you reach of course for plan is a
 20 gender neutral term use for person if you prefer.
 21 With regard to the alternates lunch that has been
 22 ordered /-D you can have that. You will not be
 23 deliberating initially with the 12 member panel.
 24 But you can't talk among yourselves. The
 25 alternates, about the case, whatsoever. You still